

# PART 15

## CONTRACTING BY NEGOTIATION

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### ~~15.106-1 Examination of Records clause.~~

- ~~—(a) This subsection implements 10 U.S.C. 2313(b) and (c) and 41 U.S.C. 254(e).~~
- ~~—(b) When contracting by negotiation, the contracting officer shall insert the clause at 52.215-1, Examination of Records by Comptroller General, in solicitations and contracts, except when—~~
  - ~~—(1) Making small purchases (see Part 13);~~
  - ~~—(2) Contracting for utility services at rates not exceeding those established to apply uniformly to the public, plus any applicable reasonable connection charge; or~~
  - ~~—(3) Making contracts with foreign contractors for which the agency head authorizes omission under Subpart 25.9.~~
- ~~—(c) In connection with administration of the clause in research and development contracts with nonprofit institutions, including subcontracts under these contracts, the Comptroller General does not require original documentation of transportation costs (exclusive of travel). [FAC 90-31]~~

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### 15.106-1 Audit and Records—Negotiation clause.

### ~~15.106-2 Audit—Negotiation clause.~~

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>(a) This subsection implements 10 U.S.C. 2313(a), 41 U.S.C. 254(b), <del>40 U.S.C. 2306(f)</del>, and OMB Circular No. A-133.</p> <p>(b) The contracting officer shall, <del>when</del> contracting by negotiation, insert the clause at 52.215-2, Audit—Negotiation, in solicitations and contracts, <del>unless the acquisition is a small purchase under Part 13.</del></p> <p>In facilities contracts, the contracting officer shall use the clause with its Alternate I. In cost-reimbursement contracts with educational institutions and other nonprofit organizations, the contracting officer shall use the clause with its Alternate II.</p>	<p>(a) This subsection implements 10 U.S.C. 2313, 41 U.S.C. 254d, and OMB Circular No. A-133.</p> <p>(b) The contracting officer shall, <b>if</b> contracting by negotiation, insert the clause at 52.215-2, Audit <b>and Records</b>—Negotiation, in solicitations and contracts <b>except those (1) not exceeding the simplified acquisition threshold in Part 13; or (2) for utility services at rates not exceeding those established to apply uniformly to the general public, plus any applicable reasonable connection charge.</b></p> <p>(c) In facilities contracts, the contracting officer shall use the clause with its Alternate I. In cost-reimbursement contracts with educational institutions and other nonprofit organizations, the contracting officer shall use the clause with its Alternate II. <b>If the examination of records by the Comptroller General is waived in accordance with 25.901, the contracting officer shall use the clause with its Alternate III.</b> [FAC 90-31]</p>

## 52.215-2 Audit and Records—Negotiation.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
AUDIT—NEGOTIATION (FEB 1993)	AUDIT AND RECORDS—NEGOTIATION (OCT 1995)
<p>(a) <i>Examination of costs.</i> If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable contract, or any combination of these, the Contractor shall maintain—and the Contracting Officer or representatives of the Contracting Officer shall have the right to examine and audit—<del>books, records, documents, and other evidence and accounting procedures and practices, regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., data bases, applications software, data base management software, utilities, etc.);</del> sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred in performing this contract. This right of examinations shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.</p> <p>(b) <i>Cost or pricing data.</i> If, <del>pursuant to law,</del> the Contractor has been required to submit cost or pricing data in connection with pricing this contract <del>or any modification to this contract,</del> the Contracting Officer or representatives of the Contracting Officer <del>who are employees of the Government</del> shall have the right to examine and audit all of the Contractor's <del>books, records, documents, and other data, regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., data bases, applications software, data base management software, utilities, etc.),</del> including computations and projections, related to proposing, negotiating, pricing, or performing the contract or modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. <del>The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used.</del></p>	<p>(a) <b>As used in this clause, <i>records</i> includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.</b></p> <p>(b) <i>Examination of costs.</i> If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or <b>an authorized</b> representative of the Contracting Officer, shall have the right to examine and audit <b>all</b> records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.</p> <p>(c) <i>Cost or pricing data.</i> If the Contractor has been required to submit cost or pricing data in connection with <b>any pricing action relating to</b> this contract, the Contracting Officer, or <b>an authorized</b> representative of the Contracting Officer, <b>in order</b> to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to—</p> <ol style="list-style-type: none"> <li>(1) The proposal for the contract, subcontract, or modification;</li> <li>(2) The discussions conducted on the proposal(s), including those related to negotiating;</li> <li>(3) Pricing of the contract, subcontract, or modification; or</li> <li>(4) Performance of the contract, subcontract or modification.</li> </ol> <p>(d) <i>Comptroller General</i>—(1) <b>The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of</b></p>

**the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.**

**(2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.**

(c) *Reports.* If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or representatives of the Contracting Officer ~~who are employees of the Government~~ shall have the right to examine and audit books, records, other documents, and supporting materials, for the purpose of evaluating (1) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.

(d) *Availability.* The Contractor shall make available at its office at all reasonable times the materials described in paragraphs (a) and (b) ~~above~~, for examination, audit, or reproduction, until 3 years after final payment under this contract, or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition—

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement; and

(2) Records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are ~~disposed of~~.

~~(e) Except as otherwise provided in FAR Subpart 4.7, Contractor Records Retention, the Contractor may transfer computer data in machine readable form from one reliable computer medium to another. The Contractor's computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original data. The contractor's choice of form or type of materials described in paragraphs (a), (b), and (c) of this clause affects neither the Contractor's obligations nor the Government's rights under this clause.~~

(e) *Reports.* If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or **an authorized** representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating (1) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.

(f) *Availability.* The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), **(c), (d), and (e) of this clause**, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition—

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement; and

(2) Records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are **finally resolved**.

(f) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (f), in all subcontracts under this contract that ~~are over the small purchase limitation in FAR Part 13, altering the clause only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.~~

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that **exceed the simplified acquisition threshold in FAR Part 13, and—**

**(1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;**

**(2) For which cost or pricing data are required; or**

**(3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.**

**The clause may be altered** only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

*Alternate I (APR-1984).* In facilities contracts, add the following sentence at the end of paragraph (a) of the basic clause:

The obligations and rights specified in this paragraph shall extend to the use of, and charges for the use of, the facilities under this contract.

*Alternate II (FEB-1993).* In cost-reimbursement contracts with educational and other nonprofit institutions, add the following paragraph (g) to the basic clause:

(g) The provisions of OMB Circular No. A-133 "Audits of Institutions of Higher Learning and Other Nonprofit Institutions" apply to this contract.

*Alternate I (OCT 1995).* **As prescribed in 15.106-1(c)**, in facilities contracts, add the following sentence at the end of paragraph (b) of the basic clause:

The obligations and rights specified in this paragraph shall extend to the use of, and charges for the use of, the facilities under this contract.

*Alternate II (OCT 1995).* **As prescribed in 15.106-1(c)**, in cost-reimbursement contracts with educational and other non-profit institutions, add the following paragraph (h) to the basic clause:

(h) The provisions of OMB Circular No. A-133, "Audits of Institutions of Higher Learning and Other Nonprofit Institutions," apply to this contract.

*Alternate III (OCT 1995).* **As prescribed in 15.106-1(c), delete paragraph (d) of the basic clause and redesignate the remaining paragraphs accordingly.** [FAC 90-31]

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## **15.106-2 Audit— Commercial items.** [FAC 90-32]

(a) This subsection implements 10 U.S.C. 2306a(d)(2) and (3) and 41 U.S.C. 254b(d)(2) and (3).

(b) The contracting officer shall, when contracting by negotiation, insert clause 52.215-43, **Audit—Commercial Items**, in solicitations and contracts when submission of cost or pricing data is expected to be excepted under 15.804-1(a)(2) (i.e., a commercial item where price is otherwise fair and reasonable). The clause shall also be included in solicitations and contracts when cost or pricing data are required, for incorporation into subcontracts that may be excepted under 15.804-1(a)(2).

**52.215-43 Audit—Commercial Items.** [FAC 90-32]

As prescribed at 15.106-2, insert the following clause:

**AUDIT—COMMERCIAL ITEMS (OCT 1995)**

(a) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or any other form.

(b) This paragraph applies to solicitations and contracts or subcontracts for commercial items that may be or have been granted an exception from submittal of cost or pricing data only under FAR 15.804-1(a)(2). In order to determine the accuracy of the information on prices at which the same or similar items have been sold in the commercial market, the Contracting Officer and authorized representatives have a right to examine such information provided by the offeror, Contractor, or subcontractor, and all records that directly relate to such information. Access does not extend to cost or profit information or other data relevant solely to the offeror's determination of the prices to be offered in the marketplace. This right shall expire two years after the date of award of the contract, or two years after the date of any modification to the contract, with respect to which this information is provided.

(c) If the prime Contractor and each higher-tier subcontractor were required to submit cost or pricing data, the Contractor and each subcontractor shall insert the substance of this clause, including this paragraph (c), in each subcontract for which submission of cost or pricing data was required or for which an exception was granted under FAR 15.804-1(a)(2).

(End of clause)

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**15.402 General.** [FAC 90-29]

(k) In accordance with Subpart 4.5, contracting officers may authorize use of electronic commerce for submission of offers. If electronic offers are authorized, the solicitation shall specify the electronic commerce method(s) that offerors may use.

**52.215-9 Submission of Offers.**

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
SUBMISSION OF OFFERS ( <del>DEC 1989</del> )	SUBMISSION OF OFFERS ( <b>JUL 1995</b> )
* * * * *	* * * * *
( <del>d</del> ) * * * * *	(d) Offers submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.
	(e) * * * * * [FAC 90-29]

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**15.406-5 Part IV—Representations and instructions.**

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
(b) Section L, Instructions, conditions, and notices to offerors or quoters. Insert in this section solicitation provisions and other information and in-	(b) Section L, Instructions, conditions, and notices to offerors or quoters. Insert in this section solicitation provisions and other information and instruc-

structions not required elsewhere to guide offerors or quoters in preparing proposals or quotations. Any alteration pertaining to the solicitation shall be included in this section as part of the provision at 52.252-3, Alterations in Solicitation. Prospective offerors or quoters may be instructed to submit technical proposals in severable parts to meet agency requirements. The severable parts should provide for separation of ~~technical and~~ cost or pricing data. The instructions may specify further organization of proposal or quotation parts, such as (1) administrative, (2) management, (3) technical, ~~and~~ (4) cost or pricing data.

(c) *Section M, Evaluation factors for award.* Identify all factors, including cost or price, cost or price-related factors, and non-cost or non-price-related factors, and any significant subfactors that will be considered in awarding the contract (see 15.605(e) and (f) and the multiple award provision at 52.215-34) and state the relative importance the Government places on those evaluation factors and subfactors.

tions not required elsewhere to guide offerors or quoters in preparing proposals or quotations. Any alteration pertaining to the solicitation shall be included in this section as part of the provision at 52.252-3, Alterations in Solicitation. Prospective offerors or quoters may be instructed to submit technical proposals in severable parts to meet agency requirements. The severable parts should provide for separation of cost or pricing data, **past performance data and, when needed, technical data**. The instructions may specify further organization of proposal or quotation parts, such as (1) administrative, (2) management, (3) technical, (4) **past performance**, and (5) cost or pricing data (see 15.804-6 and 15.804-8). [FACs 90-26 & 32

(c) *Section M, Evaluation factors for award.* Identify all **significant** factors, including cost or price, cost or price-related factors, and non-cost or non-price-related factors, and any significant subfactors that will be considered in awarding the contract (see 15.605(d) and e) and the multiple award provision at 52.215-34) and state the relative importance the Government places on those evaluation factors and subfactors. [FAC 90-31]

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## 15.407 Solicitation provisions.

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<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
(d) The contracting officer shall— (1) Insert in RFP's for other than construction the provision at 52.215-13, Preparation of Offers; (2) Insert in RFP's the provision at 52.215-14, Explanation to Prospective Offerors; (3) Insert in RFP's the provision at 52.215-15, Failure to Submit Offer; and * * * * *	(d) The contracting officer shall— (1) Insert in RFP's for other than construction the provision at 52.215-13, Preparation of Offers; (2) Insert in RFP's the provision at 52.215-14, Explanation to Prospective Offerors; (3) Insert in RFP's the provision at 52.215-15, Failure to Submit Offer, <b>except when using electronic data interchange methods not requiring solicitation mailing lists</b> ; and * * * * [FAC 90-29]

## 52.215-15 Failure to Submit Offer.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<b>FAILURE TO SUBMIT OFFER (APR 1984)</b> Recipients of this solicitation not responding with an offer should not return this solicitation, unless it specifies otherwise. Instead, they should advise the issuing office by letter or postcard whether they want to receive future solicitations for similar	<b>FAILURE TO SUBMIT OFFER (JUL 1995)</b> Recipients of this solicitation not responding with an offer should not return this solicitation, unless it specifies otherwise. Instead, they should advise the issuing office by letter, postcard, <b>or established electronic commerce methods</b> ,

requirements. If a recipient does not submit an offer and does not notify the issuing office that future solicitations are desired, the recipient's name may be removed from the applicable mailing list.

whether they want to receive future solicitations for similar requirements. If a recipient does not submit an offer and does not notify the issuing office that future solicitations are desired, the recipient's name may be removed from the applicable mailing list. [FAC 90-29]

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## 15.407 Solicitation provisions.

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<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
(d) The contracting officer shall— * * * *	(d) The contracting officer shall— * * * *
(4) Insert in RFP's the provision at 52.215-16, Contract Award. (i) <del>Civilian agencies, other than the Coast Guard and the National Aeronautics and Space Administration, shall use the basic provision as stated.</del> (ii) If the RFP is for construction, the contracting officer shall use the provision with its Alternate I. (iii) <del>The Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration shall use the basic provision with its Alternate II if the contracting officer intends that proposals will be evaluated with, and award made after, discussions with the offerors.</del> (iv) <del>The Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration shall use the basic provision with its Alternate III if the contracting officer intends that proposals will be evaluated, and award made, without discussions with offerors.</del>	(4) Insert in RFP's the provision at 52.215-16, Contract Award. (i) If the RFP is for construction, the contracting officer shall use the provision with its Alternate I. <b>If awards are to be made without discussions, also use Alternate II.</b> (ii) <b>If the contracting officer intends to evaluate offers and make award without discussions, use the basic provision with its Alternate II.</b> [FAC 90-31]

## 52.215-16 Contract Award.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
CONTRACT AWARD (JUL 1990) * * * *	CONTRACT AWARD (OCT 1995) * * * *
(c) <del>The Government may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.</del> * * * *	(c) <b>The Government intends to evaluate proposals and award a contract after conducting written or oral discussions with all responsible offerors whose proposals have been determined to be within the competitive range. However, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.</b> * * * *
<u>Alternate II</u> (NOV 1992). As prescribed in 15.407(d)(4)(iii), substitute the following paragraph (c) for paragraph (c) of the basic provision:	<u>Alternate II</u> (SEPT 1995). As prescribed in 15.407(d)(4)(ii), substitute the following paragraph (c) for paragraph (c) of the basic provision:

(c) The Government intends to evaluate proposals and award a contract without discussions with offerors. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary.

(c) The Government intends to evaluate proposals and award a contract without discussions with offerors **(except communications conducted for the purpose of minor clarification)**. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary. [FAC 90-31]

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## 15.406-2 Part I—The Schedule.

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### *FAR as of FAC 90-25*

The contracting officer shall prepare the contract Schedule as follows:

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(c) *Section C, Description/specifications/work statement.* Include any description or specifications needed in addition to Section B (see ~~Part 10, Specifications, Standards, and Other Product Descriptions~~).

(d) *Section D, Packaging and marking.* Provide packaging, packing, preservation, and marking requirements, if any (~~see 10.004(c)~~).

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(f) *Section F, Deliveries or performance.* Specify the requirements for time, place, and method of delivery or performance (see ~~Part 12, Contract Delivery or Performance~~, and 47.301-1).

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### *FAR as revised*

The contracting officer shall prepare the contract Schedule as follows:

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(c) *Section C, Description/specifications/work statement.* Include any description or specifications needed in addition to Section B (see **Part 11**).

(d) *Section D, Packaging and marking.* Provide packaging, packing, preservation, and marking requirements, if any.

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(f) *Section F, Deliveries or performance.* Specify the requirements for time, place, and method of delivery or performance (see **Subpart 11.4, Delivery or Performance Schedules**, and 47.301-1). [FAC 90-32]

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## 15.410 Amendment of solicitations before closing date.

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### *FAR as of FAC 90-25*

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(b) The contracting officer shall determine if the closing date needs to be changed when amending a solicitation. If the time available before closing is insufficient, prospective offerors or quoters shall be notified by telegram or telephone of an extension of the closing date, ~~and the notification shall be confirmed in the written amendment to the solicitation.~~ The contracting officer shall not award a contract unless any amendments made to an RFP have been issued in sufficient time to be considered by prospective offerors.

### *FAR as revised*

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(b) The contracting officer shall determine if the closing date needs to be changed when amending a solicitation. If the time available before closing is insufficient, prospective offerors or quoters shall be notified by **electronic data interchange**, telegram, or telephone of an extension of the closing date. **Telephonic and telegraphic notices** shall be confirmed in the written amendment to the solicitation. The contracting officer shall not award a contract unless any amendments made to an RFP have been issued in sufficient time to be considered by prospective offerors. [FAC 90-29]



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**15.412 Late proposals, modifications, and withdrawals of proposals.**

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
* * * *	* * * *
(d) When a late proposal or modification is received and it is clear from available information that it cannot be considered for award, the contracting officer shall promptly notify the offeror that it was received late and will not be considered. The notice need not be given when the proposed contract is to be awarded within a few days and the notice prescribed in 15.100(c)(1) would suffice.	(d) When a late proposal or modification is received and it is clear from available information that it cannot be considered for award, the contracting officer shall promptly notify the offeror that it was received late and will not be considered. The notice need not be given when the proposed contract is to be awarded within a few days and the notice prescribed in 15.1002(c)(1) would suffice. [FAC 90-31]
* * * *	* * * *
	(h) Upon withdrawal of an electronically transmitted proposal, the data received shall not be viewed and shall be purged from primary and backup data storage systems. [FAC 90-29]

**52.215-10 Late Submissions, Modifications, and Withdrawals of Proposals.**

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF PROPOSALS ( <del>DEC 1989</del> )	LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF PROPOSALS ( <b>JUL 1995</b> )
(a) Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—	(a) Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—
* * * *	* * * *
(4) Is the only proposal received.	(4) Was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or
* * * *	(5) Is the only proposal received.
	* * * * [FAC 90-29]

**52.215-36 Late Submissions, Modifications, and Withdrawals of Proposals (Overseas).**

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF PROPOSALS (OVERSEAS) ( <del>DEC 1989</del> )	LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF PROPOSALS (OVERSEAS) ( <b>JUL 1995</b> )
(a) Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—	(a) Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—
(1) Was sent by mail or, if authorized by the solicitation, was sent by telegram or via facsimile, and	(1) Was sent by mail or, if authorized by the solicitation, was sent by telegram or via facsimile, and

it is determined by the Government the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or

(2) Is the only proposal received.

\* \* \* \* \*

it is determined by the Government the late receipt was due solely to mishandling by the Government after receipt at the Government installation;

(2) **Was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or**

(3) Is the only proposal received. [FAC 90-29]

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### 15.501 Definitions.

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#### *FAR as of FAC 90-25*

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“Commercial ~~product~~ offer” means an offer of a commercial ~~product~~ that is usually sold to the general public and that the vendor wishes to see introduced in the Government’s supply system as an alternate or replacement for an existing supply item.

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#### *FAR as revised*

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“Commercial **item** offer” means an offer of a commercial **item** the vendor wishes to see introduced in the Government’s supply system as an alternate or replacement for an existing supply item. [FAC 90-32]

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### 15.503 General.

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#### *FAR as of FAC 90-25*

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(b) Advertising material, commercial ~~product~~ offers, contributions, or technical correspondence as defined in 15.501 are not unsolicited proposals.

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#### *FAR as revised*

\* \* \* \* \*

(b) Advertising material, commercial **item** offers, contributions, or technical correspondence as defined in 15.501 are not unsolicited proposals.

\* \* \* \* \* [FAC 90-32]

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### 15.604 Responsibilities.

(a) Agency heads or their designees are responsible for source selection.

(b) The cognizant technical official is responsible for the technical requirements related to the source selection process.

(c) The contracting officer is responsible for contractual actions related to the source selection process, including—

(1) Issuing solicitations to which this subpart applies in accordance with Subpart 15.4 and this subpart;

(a) Agency heads or their designees are responsible for source selection.

(b) The cognizant technical official is responsible for the technical **and past performance requirements** related to the source selection process.

(c) The contracting officer is responsible for contractual actions related to the source selection process, including—

(1) Issuing solicitations to which this subpart applies in accordance with Subpart 15.4 and this subpart;

- (2) Conducting or coordinating cost or price analyses as prescribed in Subpart 15.8;
- (3) Conducting or controlling all negotiations concerning cost or price, technical requirements, and other terms and conditions; and
- (4) Selecting the source for contract award, unless another official is designated as the source selection authority.

- (2) Conducting or coordinating cost or price analyses as prescribed in Subpart 15.8;
- (3) Conducting or controlling all negotiations concerning cost or price, technical requirements, **past performance**, and other terms and conditions; and
- (4) Selecting the source for contract award, unless another official is designated as the source selection authority. [FAC 90-26]

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#### 15.605 Evaluation factors and subfactors.

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<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>(a) The factors that will be considered in evaluating proposals <del>should</del> be tailored to each acquisition and include only those factors that will have an impact on the source selection decision.</p> <p>(b) The evaluation factors that apply to an acquisition and the relative importance of those factors are within the broad discretion of agency acquisition <del>of</del> <del>officials</del>. <del>However</del>, price or cost to the Government shall be included as an evaluation factor in every source selection.</p>	<p>(a) The factors <b>and subfactors</b> that will be considered in evaluating proposals <b>shall</b> be tailored to each acquisition and <b>shall</b> include only those factors that will have an impact on the source selection decision. [FAC 90-31]</p> <p>(b) (1) The evaluation factors <b>and subfactors</b> that apply to an acquisition and the relative importance of those factors <b>and subfactors</b> are within the broad discretion of agency acquisition officials <b>except that—</b> [FACs 90-26 &amp; 31]</p> <p>(i) Price or cost to the Government shall be included as an evaluation factor in every source selection. [FAC 90-26]</p> <p>(ii) <b>Past performance shall be evaluated in all competitively negotiated acquisitions expected to exceed \$100,000 not later than January 1, 1999, unless the contracting officer documents in the contract file the reasons why past performance should not be evaluated. Agencies may develop their own phase-in schedule for past performance evaluations which meets or exceeds the following milestones: All solicitations with an estimated value in excess of (A) \$1,000,000 issued on or after July 1, 1995; (B) \$500,000 issued on or after July 1, 1997; and (C) \$100,000 issued on or after January 1, 1999. Past performance may be evaluated in competitively negotiated acquisitions estimated at \$100,000 or less at the discretion of the contracting officer.</b> [FAC 90-26]</p>

Quality ~~also~~ shall be addressed in every source selection. ~~In evaluation factors, quality may be expressed in terms of~~ technical excellence, management capability, personnel qualifications, prior experience, ~~past performance~~, and schedule compliance.

**(iii) Quality shall be addressed in every source selection through inclusion in one or more of the non-cost evaluation factors or subfactors, such as past performance,** technical excellence, management capability, personnel qualifications, prior experience, and schedule compliance. [FACs 90-26 & 31]

**(iv) Environmental objectives, such as promoting waste reduction, source reduction, energy efficiency, and maximum practicable recovered material content (see Part 23), shall also be considered in every source selection, when appropriate.** [FAC 90-27]

(2) Any other relevant factors, such as cost realism, may also be included.

(2) Any other relevant factors **or subfactors**, such as cost realism, may also be included. [FACs 90-26 & 31]

~~(c) While the lowest price or lowest total cost to the Government is properly the deciding factor in many source selections, in certain acquisitions the Government may select the source whose proposal offers the greatest value to the Government in terms of performance and other factors. This may be the case, for example, in the acquisition of research and development or professional services, or when cost-reimbursement contracting is anticipated.~~

(d) In awarding a cost-reimbursement contract, the cost proposal should not be controlling, since advance estimates of cost may not be valid indicators of final actual costs. There is no requirement that cost-reimbursement contracts be awarded on the basis of lowest proposed cost, lowest proposed fee, or the lowest total proposed cost plus fee. The award of cost-reimbursement contracts primarily on the basis of estimated costs may encourage the submission of unrealistically low estimates and increase the likelihood of cost overruns. The primary consideration should be which offeror can perform the contract in a manner most advantageous to the Government, as determined by evaluation of proposals according to the established evaluation criteria.

(c) In awarding a cost-reimbursement contract, the cost proposal should not be controlling, since advance estimates of cost may not be valid indicators of final actual costs. There is no requirement that cost-reimbursement contracts be awarded on the basis of lowest proposed cost, lowest proposed fee, or the lowest total proposed cost plus fee. The award of cost-reimbursement contracts primarily on the basis of estimated costs may encourage the submission of unrealistically low estimates and increase the likelihood of cost overruns. The primary consideration should be which offeror can perform the contract in a manner most advantageous to the Government, as determined by evaluation of proposals according to the established evaluation criteria.

(e) The solicitation shall clearly state the evaluation factors, ~~including~~ cost or price, cost or price-related factors, and non-cost or non-price-related factors, and any significant subfactors, that will be considered in making the source selection and their relative importance (see 15.406-5(c)). Numerical

**(d)(1) The solicitation should be structured to provide for the selection of the source whose proposal offers the greatest value to the Government in terms of performance, risk management, cost or price, and other factors. At a minimum, the solicitation**

weights, which may be employed in the evaluation of proposals, need not be disclosed in solicitations. The solicitation shall inform offerors of minimum requirements that apply to particular evaluation factors and significant subfactors.

tation shall clearly state the **significant** evaluation factors, **such as** cost or price, cost or price-related factors, **past performance and other** non-cost or non-price-related factors, and any significant subfactors, that will be considered in making the source selection, and their relative importance (see 15.406-5(c)). Numerical weights, which may be employed in the evaluation of proposals, need not be disclosed in solicitations. The solicitation shall inform offerors of minimum requirements that apply to particular evaluation factors and significant subfactors.

**Further, the solicitation shall state whether all evaluation factors other than cost or price, when combined, are**

**(i) Significantly more important than cost or price,**

**(ii) Approximately equal to cost or price, or**

**(iii) Significantly less important than cost or price.**

**(2) The solicitation may elaborate on the relative importance of factors and subfactors at the discretion of the contracting officer. Agencies may elect to assign numerical weights to evaluation factors and employ those weights when evaluating proposals. Numerical weights need not be disclosed in solicitations; however, nothing precludes an agency from disclosing the weights on a case-by-case basis. The solicitation may state that award will be made to the offeror that meets the solicitation's minimum criteria for acceptable award at the lowest cost or price.**

[FAC 90-31]

(f) In addition to other factors, offers will be evaluated on the basis of advantages and disadvantages to the Government that might result from making more than one award (see 15.407(h)). The contracting officer shall assume for the purpose of making multiple awards that \$500 would be the administrative cost to the Government for issuing and administering each contract awarded under a solicitation. Individual awards shall be for the items or combination of items that result in the lowest aggregate cost to the Government, including the assumed administrative costs.

(e) In addition to other factors, offers will be evaluated on the basis of advantages and disadvantages to the Government that might result from making more than one award (see 15.407(h)). The contracting officer shall assume for the purpose of making multiple awards that \$500 would be the administrative cost to the Government for issuing and administering each contract awarded under a solicitation. Individual awards shall be for the items or combination of items that result in the lowest aggregate cost to the Government, including the assumed administrative costs.

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**15.607 Disclosure of mistakes before award.**

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*FAR as of FAC 90-25*

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*FAR as revised*

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(d) If a proposal received at the Government facility in electronic format is unreadable to the degree that conformance to the essential requirements of the solicitation cannot be ascertained from the document, the contracting officer immediately shall notify the offeror and provide the opportunity for the offeror to submit clear and convincing evidence—

(1) Of the content of the proposal as originally submitted; and

(2) That the unreadable condition of the proposal was caused by Government software or hardware error, malfunction, or other Government mishandling. [FAC 90-29]

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**15.608 Proposal evaluation.**

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*FAR as of FAC 90-25*

(a) Proposal evaluation is an assessment of both the proposal and the offeror's ability ~~(as conveyed by the proposal)~~ to successfully accomplish the prospective contract. An agency shall evaluate competitive proposals solely on the factors specified in the solicitation.

(1) *Cost or price evaluation.* The contracting officer shall use cost or price analysis (see Subpart 15.8) to evaluate the cost estimate or price, not only to determine whether it is reasonable, but also to determine the offeror's understanding of the work and ability to perform the contract. The contracting officer shall document the cost or price evaluation.

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*FAR as revised*

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(a) Proposal evaluation is an assessment of both the proposal and the offeror's ability to successfully accomplish the prospective contract. An agency shall evaluate competitive proposals solely on the factors specified in the solicitation.

(1) *Cost or price evaluation.* The contracting officer shall use cost or price analysis (see Subpart 15.8) to evaluate the cost estimate or price, not only to determine whether it is reasonable, but also to determine the offeror's understanding of the work and ability to perform the contract. The contracting officer shall document the cost or price evaluation.

(2) *Past Performance evaluation.* [New section added by FAC 90-26]

(i) Past performance information is an indicator of an offeror's ability to perform the contract. The comparative assessment of past performance information is separate from the responsibility determination required under 9.103. The number and severity of an offeror's problems, the effectiveness of corrective actions taken, the offeror's overall work record, and the age and relevance of past performance information should be considered at the time it is used.

(ii) Where past performance is to be evaluated, the solicitation shall afford offerors the opportunity to identify Federal, state and local government, and private contracts performed by the offerors that were similar in nature to the contract being

evaluated, so that the Government may verify the offerors' past performance on these contracts. In addition, at the discretion of the contracting officer, the offerors may provide information on problems encountered on the identified contracts and the offerors' corrective actions. Past performance information may also be obtained from other sources known to the Government. The source and type of past performance information to be included in the evaluation is within the broad discretion of agency acquisition officials and should be tailored to the circumstances of each acquisition. Evaluations of contractor performance prepared in accordance with Subpart 42.15 are one source of performance information which may be used.

(iii) Firms lacking relevant past performance history shall receive a neutral evaluation for past performance.

(2) *Technical evaluation.* \* \* \* \*

(3) *Technical evaluation.* \* \* \* \*

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## 15.610 Written or oral discussion.

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<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>(a) The requirement in paragraph (b) of this section for written or oral discussion need not be applied in acquisitions—</p> <p>(1) In which prices are fixed by law or regulation;</p> <p>(2) Of the set-aside portion of a partial set-aside;</p> <p>(3) For civilian agencies other than the Coast Guard and the National Aeronautics and Space Administration, in which it can be clearly demonstrated from the existence of full and open competition or accurate prior cost experience with the product or service that acceptance of the most favorable initial proposal without discussion would result in the lowest overall cost to the Government at a fair and reasonable price; <i>provided, that—</i></p> <p>—(i) The solicitation notified all offerors of the possibility that award might be made without discussion; and</p> <p>—(ii) The award is in fact made without any written or oral discussion with any offeror; or</p> <p>—(4) For the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration, if the contracting officer determines that discussions are not necessary, provided the solicitation contains the provision at 52.215-16 with its Alternate III. Once the Government states its intent to award without discussions, the rationale for reversal of this decision shall be documented in the contract file.</p> <p>(b) Except as provided in paragraph (a) above, the contracting officer shall conduct written or oral discussion with all responsible offerors who submit proposals within the competitive range. The content</p>	<p>(a) The requirement in paragraph (b) of this section for written or oral discussion need not be applied in acquisitions—</p> <p>(1) In which prices are fixed by law or regulation;</p> <p>(2) Of the set-aside portion of a partial set-aside;</p> <p>(3) <b>In which the solicitation notified all offerors that the Government intends to evaluate proposals and make award without discussion unless the contracting officer determines that discussions (other than communications conducted for the purpose of minor clarification) are considered necessary (see 15.407(d)(4)).</b> Once the Government states its intent to award without discussions, the rationale for reversal of this decision shall be documented in the contract file. [FAC 90-31]</p> <p>(b) Except as provided in paragraph (a) <b>of this section</b>, the contracting officer shall conduct written or oral discussion with all responsible offerors who submit proposals within the competitive range.</p>

and extent of the discussions is a matter of the contracting officer's judgment, based on the particular facts of each acquisition (but see paragraphs (c) and (d) below).

(c) The contracting officer shall—

(1) Control all discussions;

(2) Advise the offeror of deficiencies in its proposal so that the offeror is given an opportunity to satisfy the Government's requirements;

(3) Attempt to resolve any uncertainties concerning the technical proposal and other terms and conditions of the proposal;

(4) Resolve any suspected mistakes by calling them to the offeror's attention as specifically as possible without disclosing information concerning other offerors' proposals or the evaluation process (see 15.607 and Part 24); and

(5) Provide the offeror a reasonable opportunity to submit any cost or price, technical, or other revisions to its proposal that may result from the discussions.

\* \* \* \*

The content and extent of the discussions is a matter of the contracting officer's judgment, based on the particular facts of each acquisition (but see paragraphs (c) and (d) **of this section**.

(c) The contracting officer shall—

(1) Control all discussions;

(2) Advise the offeror of deficiencies in its proposal so that the offeror is given an opportunity to satisfy the Government's requirements;

(3) Attempt to resolve any uncertainties concerning the technical proposal and other terms and conditions of the proposal;

(4) Resolve any suspected mistakes by calling them to the offeror's attention as specifically as possible without disclosing information concerning other offerors' proposals or the evaluation process (see 15.607 and Part 24);

(5) Provide the offeror a reasonable opportunity to submit any cost or price, technical, or other revisions to its proposal that may result from the discussions; and

**(6) Provide the offeror an opportunity to discuss past performance information obtained from references on which the offeror had not had a previous opportunity to comment. Names of individuals providing reference information about an offeror's past performance shall not be disclosed.** \* \* \* \* [FAC 90-26]

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### 15.703 Acquisitions requiring make-or-buy programs.

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#### *FAR as of FAC 90-25*

(a) Contracting officers shall require prospective contractors to submit make-or-buy programs for all negotiated acquisitions whose estimated value is \$5 million or more, except when the proposed contract—

\* \* \* \* \*

(2) ~~Is priced on the basis of (i) adequate price competition, or (ii) established catalog or market prices of commercial items sold in substantial quantities to the general public, or has only prices set by law or regulation (see 15.804-3); or~~

\* \* \* \* \*

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#### *FAR as revised*

(a) Contracting officers shall require prospective contractors to submit make-or-buy programs for all negotiated acquisitions whose estimated value is \$5 million or more, except when the proposed contract—

\* \* \* \* \*

**(2) Qualifies for an exception from the requirement to submit cost or pricing data under 15.804-1; or [FAC 90-32]**

\* \* \* \* \*



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**15.704 Items and work included.**

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>The information required from a prospective contractor in a make-or-buy program shall be confined to those major items or work efforts that would normally require company management review of the make-or-buy decision because they are complex, costly, needed in large quantities, or require additional facilities to produce. Raw materials, commercial products (see 11.001), and off-the-shelf items (see 46.101) shall not be included, unless their potential impact on contract cost or schedule is critical. As a rule, make-or-buy programs should not include items or work efforts estimated to cost less than (a) 1 percent of the total estimated contract price or (b) any minimum dollar amount set by the agency, whichever is less.</p>	<p>The information required from a prospective contractor in a make-or-buy program shall be confined to those major items or work efforts that would normally require company management review of the make-or-buy decision because they are complex, costly, needed in large quantities, or require additional facilities to produce. Raw materials, commercial <b>items (see 2.101)</b>, and off-the-shelf items (see 46.101) shall not be included, unless their potential impact on contract cost or schedule is critical. As a rule, make-or-buy programs should not include items or work efforts estimated to cost less than (a) 1 percent of the total estimated contract price or (b) any minimum dollar amount set by the agency, whichever is less. [FAC 90-32]</p>

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**15.705 Solicitation requirements.**

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>* * * * *</p> <p>(b) A description of factors to be used in evaluating the proposed program, such as capability, capacity, availability of small business <del>and labor surplus area</del> concerns for subcontracting, establishment of new facilities in or near labor surplus areas, delivery or performance schedules, control of technical and schedule interfaces, proprietary processes, technical superiority or exclusiveness, and technical risks involved; and</p> <p>* * * * *</p>	<p>* * * * *</p> <p>(b) A description of factors to be used in evaluating the proposed program, such as capability, capacity, availability of <b>small, small disadvantaged and women-owned</b> small business concerns for subcontracting, establishment of new facilities in or near labor surplus areas, delivery or performance schedules, control of technical and schedule interfaces, proprietary processes, technical superiority or exclusiveness, and technical risks involved; and</p> <p>* * * * * [FAC 90-32]</p>

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**15.706 Evaluation, negotiation, and agreement.**

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>(a) * * * * *</p> <p>(b) In preparing to evaluate and negotiate prospective contractors' make-or-buy programs, the contracting officer shall request the recommendations of appropriate personnel, including technical and program management personnel, and the activity small <del>and disadvantaged business utilization</del> specialist. The proposed program shall also be made available to the</p>	<p>(a) * * * * *</p> <p>(b) In preparing to evaluate and negotiate prospective contractors' make-or-buy programs, the contracting officer shall request the recommendations of appropriate personnel, including technical and program management personnel, and the activity small business specialist. The proposed program shall also be made available to the Small Business Administra-</p>

Small Business Administration representative, if any, for review and recommendation. The contracting officer shall request these recommendations early enough to consider them fully before (1) agreeing to a make-or-buy program or (2) consenting to a change in a make-or-buy program already incorporated in a contract.

\* \* \* \* \*

(d) Contracting officers shall give primary consideration to the effect of the proposed make-or-buy program on price, quality, delivery, and performance, including technical or financial risk involved. The evaluation of “must make” and “must buy” items should normally be confined to ensuring that they are properly categorized. The effect of the following factors on the Government’s interests shall also be considered:

\* \* \* \* \*

(4) The contractor’s consideration of the competence, ability, experience, and capacity available in other firms, especially small business, small disadvantaged business, or ~~labor surplus area~~ concerns.

\* \* \* \* \*

tion representative, if any, for review and recommendation. The contracting officer shall request these recommendations early enough to consider them fully before (1) agreeing to a make-or-buy program or (2) consenting to a change in a make-or-buy program already incorporated in a contract.

\* \* \* \* \*

(d) Contracting officers shall give primary consideration to the effect of the proposed make-or-buy program on price, quality, delivery, and performance, including technical or financial risk involved. The evaluation of “must make” and “must buy” items should normally be confined to ensuring that they are properly categorized. The effect of the following factors on the Government’s interests shall also be considered:

\* \* \* \* \*

(4) The contractor’s consideration of the competence, ability, experience, and capacity available in other firms, especially small business, small disadvantaged business, or **women-owned small business** concerns.

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[FAC 90-32]

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## 15.801 Definitions.

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### *FAR as of FAC 90-25*

“Cost analysis” means the review and evaluation of the separate cost elements and proposed profit of (a) an offeror’s or contractor’s cost or pricing data and (b) the judgmental factors applied in projecting from the data to the estimated costs in order to form an opinion on the degree to which the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.

“Cost or pricing data” means all facts as of the date of price agreement that prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are factual, not judgmental, and are therefore verifiable. While they do not indicate the accuracy of the prospective contractor’s judgment about estimated future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the

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### *FAR as revised*

**“Commercial item” is defined in 2.101.**

“Cost analysis” means the review and evaluation of the separate cost elements and proposed profit of (a) an offeror’s or contractor’s cost or pricing data **or information other than cost or pricing data** and (b) the judgmental factors applied in projecting from the data to the estimated costs in order to form an opinion on the degree to which the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.

“Cost or pricing data” means all facts that, as of the date of price agreement **or, if applicable, another date agreed upon between the parties that is as close as practicable to the date of agreement on price**, prudent buyers and sellers would reasonably expect to affect price negotiations significantly. **Cost or pricing data are data requiring certification in accordance with 15.804-4.** Cost or pricing data are factual, not judgmental, and are therefore verifiable. While they do not indicate the accuracy of the prospective

soundness of estimates of future costs and to the validity of determinations of costs already incurred. They also include such factors as \* \* \* \* \*

contractor's judgment about estimated future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred. They also include such factors as— \* \* \* \* \*

**“Cost realism” means the costs in an offeror's proposal are (a) realistic for the work to be performed; (b) reflect a clear understanding of the requirements; and (c) are consistent with the various elements of the offeror's technical proposal.**  
\* \* \* \* \*

**“Information other than cost or pricing data” means any type of information that is not required to be certified, in accordance with 15.804-4, that is necessary to determine price reasonableness or cost realism. For example, such information may include pricing, sales, or cost information, and includes cost or pricing data for which certification is determined inapplicable after submission.**  
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**“Subcontract,” as used in this subpart, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or a subcontractor.**  
[FAC 90-32]

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## 15.802 Policy.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<del>—(a) 10 U.S.C. 2306a and 41 U.S.C. 254(d) provide that all executive agencies shall require a prime contractor or any subcontractor to submit and certify cost or pricing data under certain circumstances. The Acts also require inclusion of contract clauses that provide for reduction of the contract price by any significant amounts that such price was increased because of submission of contractor or subcontractor defective cost or pricing data.</del>	
<del>(b) Contracting officers shall—</del> <del>(1) Purchase supplies and services from responsible sources at fair and reasonable prices;</del>	Contracting officers shall— <b>(a)</b> Purchase supplies and services from responsible sources at fair and reasonable prices. <b>In es-</b>

establishing the reasonableness of the offered prices, the contracting officer shall not obtain more information than is necessary. To the extent that the Truth in Negotiations Act, as implemented in 15.804-2 and 15.804-5(b) permits, the contracting officer shall generally use the following order of preference in determining the type of information required:

(1) No further information from the offeror if the price is based on adequate price competition, except as provided by 15.804-5(a)(3).

(2) Information other than cost or pricing data:

(i) Information related to prices (e.g., established catalog or market prices), relying first on information available within the Government; second, on information obtained from sources other than the offeror; and, if necessary, on information obtained from the offeror.

(ii) Cost information, which does not meet the definition of cost or pricing data at 15.801.

(3) Cost or pricing data. The contracting officer should use every means available to ascertain a fair and reasonable price prior to requesting cost or pricing data. Contracting officers shall not unnecessarily require the submission of cost or pricing data, because it leads to increased proposal preparation costs, generally extends acquisition lead-time, and wastes both contractor and Government resources.

~~(2)~~ Price each contract separately and independently and not ~~(i)~~ use proposed price reductions under other contracts as an evaluation factor or ~~(ii)~~ consider losses or profits realized or anticipated under other contracts; and

~~(3)~~ Not include in a contract price any amount for a specified contingency to the extent that the contract provides for price adjustment based upon the occurrence of that contingency.

(b) Price each contract separately and independently and not—

(1) Use proposed price reductions under other contracts as an evaluation factor, or

(2) Consider losses or profits realized or anticipated under other contracts.

(c) Not include in a contract price any amount for a specified contingency to the extent that the contract provides for a price adjustment based upon the occurrence of that contingency.

[FAC 90-32]

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### 15.803 General.

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#### *FAR as of FAC 90-25*

(a) Since information from sources other than an offeror's or contractor's records may significantly affect the Government's negotiating position, Government personnel shall not disclose to an offeror or contractor any conclusions, recommendations, or portions of administrative contracting officer or auditor reports regarding the offeror's or contractor's proposal without the concurrence of the contracting officer responsible for negotiation. This prohibition does not preclude disclosing discrepancies or mistakes of fact (such as duplications, omissions, and errors in computation) contained in the cost or pricing data supporting the proposal.

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#### *FAR as revised*

(a) Since information from sources other than an offeror's or contractor's records may significantly affect the Government's negotiating position, Government personnel shall not disclose to an offeror or contractor any conclusions, recommendations, or portions of administrative contracting officer or auditor reports regarding the offeror's or contractor's proposal without the concurrence of the contracting officer responsible for negotiation. This prohibition does not preclude disclosing discrepancies or mistakes of fact (such as duplications, omissions, and errors in computation) contained in the cost or pricing data **or information other than cost or pricing data** supporting the proposal.

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[FAC 90-32]

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### 15.804 Cost or pricing data and information other than cost or pricing data.

#### ~~15.804 Cost or pricing data.~~

#### 15.804-1 Prohibition on obtaining cost or pricing data.

##### ~~15.804-1 General.~~

~~—(a) Cost or pricing data submitted by an offeror or contractor enable the Government to perform cost or price analysis and ultimately enable the Government and the contractor to negotiate fair and reasonable prices. Cost or pricing data may be submitted actually or by specific identification in writing.~~

~~—(b) The Armed Services Procurement Manual for Contract Pricing (ASPM No. 1) was issued by the Department of Defense to guide pricing and negotiating personnel. It provides detailed discussions and examples applying pricing policies to pricing problems. ASPM No. 1 is available for use for instruction and professional guidance. However, it is not directive, and its references to Department of Defense forms and regulations should be considered informational only. Copies of ASPM No. 1 (Stock No. 008-000-00221-5) may be purchased from the Superintendent of Documents, Attn: Mail List Section, U.S. Government Printing Office, Washington, DC 20402.~~

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#### *FAR as of FAC 90-25*

#### ~~15.804-3 Exemptions from or waiver of submission of certified cost or pricing data.~~

(a) ~~General.~~ Except as provided in paragraphs (b) and (c) below, the contracting officer shall not require submission or certification of cost or pricing data when the contracting officer determines that prices are—

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#### *FAR as revised*

(a) **Exceptions to cost or pricing data requirements.** The contracting officer shall not, pursuant to 10 U.S.C. 2306a and 41 U.S.C. 254b, require submission of cost or pricing data **(but may require information other than cost or pricing data to support a determination of price reasonableness or cost realism)**—

(1) **If** the contracting officer determines that prices **agreed upon** are based on—

~~(1) Based on adequate price competition (see paragraph (b) below);~~

~~(2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public (see paragraph (c) below); or~~

~~(3) Set by law or regulation (see paragraph (d) below).~~

(i) Adequate price competition (see **exception standards at paragraph (b)(1) of this subsection**);

(ii) Established catalog or market prices of commercial items sold in substantial quantities to the general public (see **exception standards at paragraph (b)(2) of this section**); or

(iii) Prices set by law or regulation (see **exception standards at paragraph (b)(3) of this subsection**).

(2) For acquisition of a commercial item, if the contracting officer does not have sufficient information to support an exception under paragraph (a)(1) of this section, but the contracting officer can determine the price is fair and reasonable (see exception standards at paragraph (b)(4) of this subsection and pricing requirements at 15.804-5(b));

(3) For exceptional cases where a waiver has been granted (see exception standards at paragraph (b)(5) of this section); or

(4) For modifications to contracts or subcontracts for commercial items, if the basic contract or subcontract was awarded without the submission of cost or pricing data because the action was granted an exception from cost or pricing data requirements under paragraph (a)(1) of this subsection and the modification does not change the contract or subcontract to a contract or subcontract for the acquisition of other than a commercial item (see exception standards at paragraph (b)(6) of this subsection).

(b) *Adequate price competition.* (1) ~~Price competition exists if—~~

~~—(i) Offers are solicited;~~

~~(ii) Two or more responsible offerors that can satisfy the Government's requirements submit priced offers responsive to the solicitation's expressed requirements; and~~

~~(iii) These offerors compete independently for a contract to be awarded to the responsible offeror submitting the lowest evaluated price.~~

(b) *Standards for exceptions from cost or pricing data requirements—*(1) *Adequate price competition. A price is based on adequate price competition if—*

(i) Two or more responsible offerors, **competing independently**, submit priced offers responsive to the **Government's** expressed requirement and if—

(A) Award will be made to a responsible offeror whose proposal offers either—

(1) The greatest value (see 15.605(c)) to the Government and price is a substantial factor in source selection; or

(2) The lowest evaluated price; and

(2) If price competition exists, the contracting officer shall presume that it is adequate unless—

- (i) The solicitation is made under conditions that unreasonably deny to one or more known and qualified offerors an opportunity to compete;
- (ii) The low offeror has such a decided advantage that it is practically immune from competition; or
- (iii) There is a finding, supported by a statement of the facts and approved at a level above the contracting officer, that the lowest price is unreasonable.

(B) There is no finding that the price of the otherwise successful offeror is unreasonable. Any such finding must be supported by a statement of the facts and approved at a level above the contracting officer.

(ii) There was a reasonable expectation, based on market research or other assessment, that two or more responsible offerors, competing independently, would submit priced offers responsive to the solicitation's expressed requirement, even though only one offer is received from a responsible, responsive offeror and if—

(A) Based on the offer received, the contracting officer can reasonably conclude that the offer was submitted with the expectation of competition, e.g., circumstances indicate that—

(1) The offeror believed that at least one other offeror was capable of submitting a meaningful, responsive offer; and

(2) The offeror had no reason to believe that other potential offerors did not intend to submit an offer; and

(B) The determination that the proposed price is based on adequate price competition and is reasonable is approved at a level above the contracting officer; or

(3) A price is “based on” adequate price competition if it results directly from price competition or if price analysis alone clearly demonstrates that the proposed price is reasonable in comparison with current or recent prices for the same or substantially the same items purchased in comparable quantities, terms, and conditions under contracts that resulted from adequate price competition.

(iii) Price analysis clearly demonstrates that the proposed price is reasonable in comparison with current or recent prices for the same or similar items purchased in comparable quantities, **under comparable** terms and conditions under contracts that resulted from adequate price competition.

(c) *Established catalog or market prices.* A proposal is exempt from the requirement for submission of certified cost or pricing data if the prices are, or are based on, established catalog or established market prices of commercial items sold in substantial quantities to the general public. In order to qualify for this exemption, the terms of the proposed purchase, such as quantity and delivery requirements, should be sufficiently similar to those of the commercial sales that the catalog or market price will be fair and reasonable.

(2) *Established catalog or market prices—*

(4) “Established catalog prices” must be recorded in a form regularly maintained by the manufacturer

(i) *Established catalog price.* Established catalog prices are prices (including dis-

or vendor. This form may be a catalog, price list, schedule, or other verifiable and established record. The record must (i) be published or otherwise available for customer inspection and (ii) state current or last sales price to a significant number of buyers constituting the general public (see subparagraph (5) below).

(2) “Established market prices” are current prices that (i) are established in the course of ordinary and usual trade between buyers and sellers free to bargain and (ii) can be substantiated by data from sources independent of the manufacturer or vendor.

—(3) “Commercial items” are supplies or services regularly used for other than Government purposes and sold or traded to the general public in the course of normal business operations.

—(7) If an item is substantially similar to a commercial item for which there is an established catalog or market price at which substantial quantities are sold to the general public, but the price proposed is not based on this catalog or market price (see subparagraph (6) above), the contracting officer may, if doing so will result in a fair and reasonable price, limit any requirement for cost or pricing data to those data that pertain to the differences between the items. When the difference between the catalog or market price of an item or items and the proposed total contract price exceeds the pertinent threshold set forth at 15.804-2(a)(1), the contracting officer shall require submission of certified cost or pricing data to identify and justify that difference unless an exemption or waiver is granted.

—(4) An item is “sold in substantial quantities” only when the quantities regularly sold are sufficient to constitute a real commercial market. Nominal quantities, such as models, samples, prototypes, or experimental units, do not meet this requirement. For services to be sold in substantial quantities, they must be customarily provided by the offeror, using personnel regularly employed and equipment (if any is necessary) regularly maintained solely or principally to provide the services.

count prices) recorded in a catalog, price list, schedule, or other verifiable and established record that (A) are regularly maintained by the manufacturer or vendor; and (B) are published or otherwise available for customer inspection.

(ii) *Established market price.* An established market price is a price that is established in the course of ordinary and usual trade between buyers and sellers free to bargain and that can be substantiated by data from sources independent of the offeror.

(iii) *Based on.* A price may also be based on an established catalog or market price if the item or class of items being purchased is not itself a catalog or market priced commercial item but is sufficiently similar to the catalog or market priced commercial item to ensure that any difference in prices can be identified and justified without resorting to cost analysis.

(NOTE: See (6) below in left hand column.)

(iv) *Sold in substantial quantities.* An item is sold in substantial quantities if there are sales of more than a nominal quantity based on the norm of the industry segment. In determining what constitutes a substantial quantity, the contracting officer should consider such things as the size of the market; and how recently the item was introduced into the market. Models, samples, prototypes, and experimental units are not substantial quantities. For services to be sold in substantial quantities, they must also be customarily provided by the offeror, using personnel regularly employed and equipment (if any is necessary) regularly maintained principally to provide the services.

(A) The method used to establish sales may be sales order, contract, shipment,



invoice, actual recorded sales, or other records, so long as the method used is consistent, provides an accurate indication of sales activity, and is verifiable. If the item would not otherwise qualify for an exception, sales of the item by affiliates may be considered. In addition, sales of essentially the same commercial item by other manufacturers or vendors may be considered in determining whether sales are substantial, provided that the price of those sales is also considered. Data to support sales quantities may also come from other manufacturers, industry associations or marketing groups, annual financial reports, etc.

(B) An exception may apply for an item based on the market price of the item regardless of the quantity of sales of the item previously made by the offeror or the types of customers for these sales, provided that sales of the same or similar items by other sellers meet the exception criteria.

—(5) The “general public” is a significant number of buyers other than the Government or affiliates of the offeror; the item involved must not be for Government end use. For the purpose of this subsection 15.804-3, items acquired for “Government end use” include items acquired for foreign military sales.

(v) *General public.* The general public ordinarily consists of buyers other than the U.S. Government or its instrumentalities, e.g., U.S. Government corporations. Sales to the general public do not include sales to affiliates of the offerors or purchases by the U.S. Government on behalf of foreign governments, such as for Foreign Military Sales. If the contracting officer can determine without requiring information from the offeror that sales are for Government end use, these sales need not be considered sales to the general public.

—(6) A price is “based on” a catalog or market price only if the item being purchased is sufficiently similar to the catalog- or market-priced commercial item to ensure that any difference in prices can be identified and justified without resort to cost analysis.

—(8) Even though there is an established catalog or market price of commercial items sold in substantial quantities to the general public, the contracting officer may require cost or pricing data if (i) the contracting officer makes a written finding that the price is not reasonable, including the facts upon which the finding is based, and (ii) the finding is approved at a level above the contracting officer.

(NOTE: See (iii) above in right hand column.)

~~(d) Prices set by law or regulation. A price set by law or regulation is exempt from the requirement for submission of certified cost or pricing data. Pronouncements in the form of periodic rulings, reviews, or similar actions of a governmental body, or embodied in the laws, are sufficient to establish the price.~~

**(3) Prices set by law or regulation.** Pronouncements in the form of periodic rulings, reviews, or similar actions of a governmental body, or embodied in the laws are sufficient to **set a price**.

**(4) Commercial items.** For acquisition of a commercial item, if the contracting officer does not have sufficient information to support an exception under 15.804-1(a)(1) or (a)(4), the contracting officer shall grant an exception for a contract, subcontract, or modification of a contract or subcontract if the contracting officer obtains the pricing information described in 15.804-5(b). Cost or pricing data may be obtained for such a commercial item only if the contracting officer makes a written determination that the pricing information is inadequate for performing a price analysis and determining price reasonableness.

~~(i) Waiver for exceptional cases.—The agency head (or, if the contract is with a foreign government or agency, the head of the contracting activity) may, in exceptional cases, waive the requirement for submission of certified cost or pricing data. The authorization for the waiver and the reasons for granting it shall be in writing. The agency head may delegate this authority. When the agency head or designee has waived the requirement for submission of certified cost or pricing data, the contractor or higher-tier subcontractor to whom the waiver relates shall be considered as having been required to make available cost or pricing data for purposes of 15.804-2(a)(1)(iii). Consequently, award of any lower-tier subcontract expected to exceed the pertinent threshold set forth at 15.804-2(a)(1) requires the submission of certified cost or pricing data unless exempt or waived under this subsection 15.804-3.~~

**(5) Exceptional cases.** The head of the contracting activity may, **without power of delegation**, waive the requirement for submission of cost or pricing data. The authorization for the waiver and the reasons for granting it shall be in writing. **A waiver may be considered if another exception does not apply but the price can be determined to be fair and reasonable without submission of cost or pricing data. For example, if cost or pricing data were furnished on previous production buys and the contracting officer determines such data are sufficient, when combined with updated information, a waiver may be granted. If the head of the contracting activity has waived the requirement for submission of cost or pricing data, the contractor or higher-tier subcontractor to whom the waiver relates shall be considered as having been required to make available cost or pricing data. Consequently, award of any lower-tier subcontract expected to exceed the cost or pricing data threshold requires the submission of cost or pricing data unless an exception otherwise applies to the subcontract.**

**(6) Modifications.** This exception only applies when the original contract or subcontract was exempt from cost or pricing

data based on adequate price competition, catalog or market price, or price set by law or regulation (15.804-1(a)(1)). For modifications of contracts or subcontracts for commercial items, the exception at 15.804-1(a)(4) applies if the modification does not change the item from a commercial item to a noncommercial item. However, if the modification to a contract or a subcontract changes the nature of the work under the contract or subcontract either by a change to the commercial item or by the addition of other noncommercial work, the contracting officer is not prohibited from obtaining cost or pricing data for the added work.

(c) *Special circumstances when purchasing commercial items.* (1) It is not necessary to obtain information supporting an exception for each line item. Sampling techniques may be used.

(2) If the U.S. Government has acted favorably on an exception request for the same or similar items, the contracting officer may consider the prior submissions as support for the current exception request. Relief from the submission of new information does not relieve the contracting officer from the requirement to determine reasonableness of price on the current acquisition.

(3) When acquiring by separate contract an item included on an active Federal Supply Service or Information Technology Service Multiple Award Schedule contract, the contracting officer should grant an exception and not require documentation if the offeror has provided proof that an exception has been granted for the schedule item. Price analysis shall be performed in accordance with 15.805-2 to determine reasonableness of price.

(4) The contracting officer and offeror may make special arrangements for the submission of exception requests for repetitive acquisitions. These arrangements can take any form as long as they set forth an effective period and the exception criteria at 15.804-1 are satisfied. Such arrangements may be extended to other Government offices with their concurrence.

~~—(c) *Claiming and granting exemption.* To receive an exemption under paragraph (c) or (d) of this subsection, the offeror must ordinarily claim it on Standard Form 1412, Claim for Exemption from Submission of Certified Cost or Pricing Data, when the total proposed amount exceeds the pertinent threshold set forth at 15.804-2(a)(1), and more than one catalog item for which an exemption is claimed exceeds \$50,000. When an exemption is claimed for more than one item in a proposal, a separate SF 1412 is required for each item exceeding \$50,000 except as otherwise provided in the solicitation. The contracting officer may grant an exemption and need not require the submission of SF 1412 when—~~

~~—(1) The Government has acted favorably on an exemption claim for the same item or similar items~~

(d) *Requesting an exception.* In order to qualify for an exception, other than an exception for adequate price competition, from the requirements to submit cost or pricing data, the offeror must submit a written request. The solicitation provision at 52.215-41 or other methods may be used. It is the responsibility of the contracting officer to determine, based on the information submitted, and any other information available to the contracting officer, which exception, if any, applies.

within the past year. In that case, except as otherwise directed by the contracting officer, the offeror may furnish a copy of the prior claim and related Government action. The offeror must also submit a statement to the effect that to its knowledge since the prior submission, except as expressly set forth in the statement, there have been no changes in the catalog price or discounts, volume of actual sales, or the ratio of sales for Government end use to sales in other categories which would cause a cumulative change in price exceeding \$25,000;

—(2) Special arrangements for the submission of exemption claims have been made in anticipation of repetitive acquisitions of catalog items; or

—(3) There is evidence, before solicitation, that the item has an acceptable established catalog or market price or a price set by law or regulation. Evidence may include (i) recent submissions by offerors or (ii) the contracting officer's knowledge of market conditions, prevailing prices, or sources.

—(f) *Verification.* (1) When a prospective contractor requests exemption from submission of certified cost or pricing data, the contracting officer shall ensure that applicable criteria in either paragraph (c) or (d) above, as appropriate, are satisfied before issuing the exemption.

—(2) SF 1412 lists three categories of sales related to the established catalog price of a commercial item sold in substantial quantities to the general public: A, Sales to the U.S. Government or to contractors for U.S. Government use; B, Sales at catalog price to the general public; and C, Sales to the general public at other than catalog price. Although "substantial quantities" cannot be precisely defined (see subparagraph (c)(4) above), the following guidelines are provided for determining whether exemption claims submitted under the catalog price provision of SF 1412 meet the "substantial quantities" criterion:

—(i) Sales to the general public are normally regarded as substantial if (A) Category B and C sales are not negligible in themselves and comprise at least 55 percent of total sales of the item and (B) Category B sales comprise at least 75 percent of the total of Category B and C sales.

—(ii) Sales to the general public are rarely considered substantial enough to grant an exemption if (A) Category B and C sales comprise less than 35 percent of total sales of the item or (B) Category B sales comprise less than 55 percent of the total of Category B and C sales.

—(iii) When percentages fall between those above, the contracting officer should analyze the individual situation in order to determine whether or not an exemption is justified.

—(3) The contracting officer may verify or obtain verification (including audit or contract administration assistance) of the submitted data pertaining to catalog or market prices or prices set by law or regulation. Access to the prospective contractor's records is limited to access to the facts bearing directly on the exemption claimed. It does not extend to cost, profit, or other data relevant solely to the reasonableness of the catalog or proposed price.

—(g) *Individual or class exemptions.* The chief of the contracting office may authorize individual or class exemptions for exceptional cases when the contracting officer recommends that an exemption should be made, even though the case does not strictly meet all the criteria for catalog or market price exemption. The quantity and prices of actual commercial sales compared with prices offered to the Government, and price relationships as influenced by prevailing trade practices, are the important factors for consideration. The Government's need and the prospective contractor's resistance are not appropriate considerations.

—(h) *Price analysis.* Even though an item qualifies for exemption from the requirement for submission of certified cost or pricing data, the contracting officer shall make a price analysis to determine the reasonab-

ness of the price and any need for further negotiation. Unless information is available from Government sources, it may be necessary to obtain from the prospective contractor information such as that regarding—

- (1) The supplier's marketing system (e.g., use of jobbers, brokers, sales agencies, or distributors);
- (2) The services normally provided commercial purchasers (e.g., engineering, financing, or advertising or promotion);
- (3) Normal quantity per order; and
- (4) Annual volume of sales to largest customers.

[FAC 90-32]

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## 15.804-2 Requiring cost or pricing data.

### ~~15.804-2 Requiring certified cost or pricing data.~~

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>(a)(1) The threshold for obtaining cost or pricing data is \$500,000. This amount will be subject to adjustment, effective October 1, 1995, and every five years thereafter. <del>Except as provided in 15.804-3, certified cost or pricing data are required before accomplishing any of the following actions expected to exceed the threshold in effect at time of agreement on price or, in the case of existing contracts, the threshold specified in the contract—</del></p> <p>(i) The award of any negotiated contract (except for undefinitized actions such as letter contracts);</p> <p>(ii) The award of a subcontract at any tier, if the contractor and each higher tier subcontractor have been required to furnish cost or pricing data (see <del>15.804-3(i)</del>); or</p> <p>(iii) The modification of any sealed bid or negotiated contract (whether or not cost or pricing data were initially required) or subcontract covered by paragraph (a)(1)(ii) of this subsection. Price adjustment amounts shall consider both increases and decreases. (For example, a \$150,000 modification resulting from a reduction of \$350,000 and an increase of \$200,000 is a pricing adjustment exceeding \$500,000.) This requirement does not apply when unrelated and separately priced changes for which</p>	<p>(a)(1) <b>Pursuant to 10 U.S.C. 2306a and 41 U.S.C. 254b, cost or pricing data shall be obtained only if the contracting officer concludes that none of the exceptions in 15.804-1 applies. However, if the contracting officer has sufficient information available to determine price reasonableness, then a waiver under the exception at 15.804-1(b)(5) should be considered.</b> The threshold for obtaining cost or pricing data is \$500,000. This amount will be subject to adjustment, effective October 1, 1995, and every five years thereafter. <b>Unless an exception applies,</b> cost or pricing data are required before accomplishing any of the following actions expected to exceed the threshold in effect <b>on the date</b> of agreement on price, <b>or the date of award, whichever is later;</b> or, in the case of existing contracts, the threshold specified in the contract:</p> <p>(i) The award of any negotiated contract (except for undefinitized actions such as letter contracts).</p> <p>(ii) The award of a subcontract at any tier, if the contractor and each higher-tier subcontractor have been required to furnish cost or pricing data <b>(but see exceptional cases at 15.804-1(b)(5)).</b></p> <p>(iii) The modification of any sealed bid or negotiated contract (whether or not cost or pricing data were initially required) or subcontract covered by paragraph (a)(1)(ii) of this subsection. Price adjustment amounts shall consider both increases and decreases. (For example, a \$150,000 modification resulting from a reduction of \$350,000 and an increase of \$200,000 is a pricing adjustment exceeding \$500,000.) This requirement does not apply when unrelated and separately priced changes for which</p>

cost or pricing data would not otherwise be required are included for administrative convenience in the same modification.

~~—(2) Contracting officers shall, if requested by the prime contractor, modify contracts to change the threshold in the contract to the cost or pricing data threshold in paragraph (a)(1) of this subsection, without requiring consideration. The contract modification shall be accomplished by inserting into the contract the current version of the clauses 52.215-23, Price Reduction for Defective Cost or Pricing Data—Modifications, and 52.215-25, Subcontractor Cost or Pricing Data—Modifications, or 52.215-24, Subcontractor Cost or Pricing Data, as applicable. These new contract clauses shall apply only to contract modifications and subcontracts for which agreement on price occurs after the contracting officer has inserted the new clauses. [entire (2) revised by FAC 90-22]~~

~~—(3) The contracting officer may obtain certified cost or pricing data for pricing actions below the pertinent threshold in subparagraph (a)(1) of this subsection provided the action exceeds the small purchase limitation. For such pricing actions, the instances in which certified cost or pricing data and inclusion of defective pricing clauses would be justified should be few; however, the contracting officer shall give special consideration to requiring certified cost or pricing data for such pricing actions if the offeror, contractor, or subcontractor—~~

~~—(i) Has been the subject of recent or recurring, and significant findings of defective pricing;~~

~~—(ii) Currently has significant deficiencies in its cost estimating systems; or~~

~~—(iii) Has recently been indicted for, convicted of, or the subject of an administrative or judicial finding of fraud regarding its cost estimating systems or cost accounting practices.~~

~~The contracting officer shall document the file to justify the requirement for cost or pricing data not required by regulation. The documentation shall include the contracting officer's written finding that certified cost or pricing data are necessary, the facts supporting that finding, and the approval of the finding at a level above the contracting officer.~~

~~—(4) The contracting officer shall not require certified cost or pricing data when awarding a contract below the small purchase limitation at 13.000.~~

~~—(5) When certified cost or pricing data are not required, the contracting officer may request partial or limited data to determine a reasonable price (see 15.804-6(a)(2)).~~

cost or pricing data would not otherwise be required are included for administrative convenience in the same modification.

**(2) Unless prohibited because an exception at 15.804-1(a)(1) applies, the head of the contracting activity, without power of delegation, may authorize the contracting officer to obtain cost or pricing data for pricing actions below the pertinent threshold in paragraph (a)(1) of this subsection provided the action exceeds the simplified acquisition threshold. The head of the contracting activity shall justify the requirement for cost or pricing data. The documentation shall include a written finding that cost or pricing data are necessary to determine whether the price is fair and reasonable and the facts supporting that finding.**

(b) When ~~certified~~ cost or pricing data are required, the contracting officer shall require the contractor or prospective contractor to submit to the contracting officer (and to have any subcontractor or prospective subcontractor submit to the prime contractor or appropriate subcontractor tier) the following in support of any proposal:

(1) The cost or pricing data.

(2) A certificate of current cost or pricing data, in the format specified in 15.804-4, certifying that to the best of its knowledge and belief, the cost or pricing data were accurate, complete, and current as of the date of ~~final~~ agreement on price.

(b) When cost or pricing data are required, the contracting officer shall require the contractor or prospective contractor to submit to the contracting officer (and to have any subcontractor or prospective subcontractor submit to the prime contractor or appropriate subcontractor tier) the following in support of any proposal:

(1) The cost or pricing data.

(2) A certificate of current cost or pricing data, in the format specified in 15.804-4, certifying that to the best of its knowledge and belief, the cost or pricing data were accurate, complete, and current as of the date of agreement on price **or, if applicable, another date agreed upon between the parties that is as close as practicable to the date of agreement on price.**

**(c) If cost or pricing data are requested and submitted by an offeror, but an exception is later found to apply, the data shall not be considered cost or pricing data as defined in 15.801 and shall not be certified in accordance with 15.804-4.**

(c) The requirements of this section also apply to contracts entered into by the head of an agency on behalf of a foreign government.

(d) The requirements of this section also apply to contracts entered into by the head of an agency on behalf of a foreign government.  
[FAC 90-32]

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### 15.804-3 [Reserved] [FAC 90-32]

~~15.804-3 Exemptions from or waiver of submission of certified cost or pricing data.~~  
[moved to 15.804-1]

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### 15.804-4 Certificate of Current Cost or Pricing Data.

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#### *FAR as of FAC 90-25*

(a) When ~~certified~~ cost or pricing data are required ~~under 15.804-2~~, the contracting officer shall require the contractor to execute a Certificate of Current Cost or Pricing Data, shown ~~below~~, and shall include the executed certificate in the contract file. ~~The certificate states that the cost or pricing data are accurate, complete, and current as of the date the contractor and the Government agreed on a price. Only one certificate shall be required; the contractor shall submit it as soon as practicable after price agreement is reached.~~

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#### *FAR as revised*

(a) When cost or pricing data are required, the contracting officer shall require the contractor to execute a Certificate of Current Cost or Pricing Data, shown **following this paragraph (a)**, and shall include the executed certificate in the contract file.

## CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in section 15.801 of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.804-2) submitted, either actually or by specific identification in writing, to the contracting officer or to the contracting officer's representative in support of .....\* are accurate, complete, and current as of .....\*\*. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and the Government that are part of the proposal. \* \* \* \* \*

\*\* Insert the day, month, and year when price negotiations were concluded and price agreement was reached.

\* \* \* \* \*

(c) Closing or cutoff dates should be included as part of the data submitted with the proposal. ~~Certain data may not be reasonably available before normal periodic closing dates (e.g., actual indirect costs). Before agreement on price, the contractor shall update all data as of the latest dates for which information is reasonably available. Data within the contractor's or a subcontractor's organization on matters significant to contractor management and to the Government will be treated as reasonably available. What is significant depends upon the circumstances of each acquisition.~~

\* \* \* \* \*

(e) ~~Even though the solicitation may have requested cost or pricing data, the contracting officer shall not require a Certificate of Current Cost or Pricing Data when the resulting award is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation (see 15.804-3(a) through (d)).~~ \* \* \* \* \*

## CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in section 15.801 of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.804-2) submitted, either actually or by specific identification in writing, to the contracting officer or to the contracting officer's representative in support of .....\* are accurate, complete, and current as of .....\*\*. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and the Government that are part of the proposal. \* \* \* \* \*

\*\* Insert the day, month, and year when price negotiations were concluded and price agreement was reached **or, if applicable, another date agreed upon between the parties that is as close as practicable to the date of agreement on price.** \* \* \* \* \*

(c) **The contracting officer and contractor are encouraged to reach a prior agreement on criteria for establishing closing or cutoff dates when appropriate in order to minimize delays associated with proposal updates.** Closing or cutoff dates should be included as part of the data submitted with the proposal **and, before agreement on price, data should be updated by the contractor to the latest closing or cutoff dates for which the data are available. Use of cutoff dates coinciding with reports is acceptable, as certain data may not be reasonably available before normal periodic closing dates (e.g., actual indirect costs).** Data within the contractor's or a subcontractor's organization on matters significant to contractor management and to the Government will be treated as reasonably available. What is significant depends upon the circumstances of each acquisition.

\* \* \* \* \*

(e) **If cost or pricing data are requested and submitted by an offeror, but an exception is later found to apply, the data shall not be considered cost or pricing data and shall not be certified in accordance with this subsection.**

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[FAC 90-32]



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**15.804-5—Reserved.**

**15.804-5 Requiring information other than cost or pricing data. [FAC 90-32]**

(a)(1) If cost or pricing data are not required because an exception applies, or an action is at or below the cost or pricing data threshold, the contracting officer shall make a price analysis to determine the reasonableness of the price and any need for further negotiation.

(2) The contracting officer may require submission of information other than cost or pricing data only to the extent necessary to determine reasonableness of the price or cost realism. The contractor's format for submitting such information shall be used unless the contracting officer determines that use of a specific format is essential. The contracting officer shall ensure that information used to support price negotiations is sufficiently current to permit negotiation of a fair and reasonable price. Requests for updated offeror information should be limited to information that affects the adequacy of the proposal for negotiations, such as changes in price lists. Such data shall not be certified in accordance with 15.804-4.

(3) When an acquisition is based on adequate price competition, generally no additional information is necessary to determine the reasonableness of price. However, if it is determined that additional information is necessary to determine the reasonableness of the price, the contracting officer shall, to the maximum extent practicable, obtain the additional information from sources other than the offeror. In addition, the contracting officer may request information to determine the cost realism of competing offers or to evaluate competing approaches.

(4) When cost or pricing data are not required because an action is at or below the cost or pricing data threshold, information requested shall include, as a minimum, appropriate information on the prices and quantities at which the same or similar items have previously been sold, that is adequate for evaluating the reasonableness of the proposed price. Cost information may also be required. For example, cost information might be necessary to support an analysis of material costs.

(b)(1) When acquiring commercial items for which an exception under 15.804-1(a)(2) may apply, the contracting officer shall seek to obtain from the offeror or contractor information on prices at which the same or similar items have been sold in the commercial market, that is adequate for evaluating, through price analysis, the reasonableness of the price of the action.

(2) If such information is not available from the offeror or contractor, the contracting officer shall seek to obtain such information from another source or sources.

(3) Requests for sales data relating to commercial items shall be limited to data for the same or similar items during a relevant time period.

(4) In requesting information from an offeror under this paragraph (b), the contracting officer shall, to the maximum extent practicable, limit the scope of the request to include only information that is in the form regularly maintained by the offeror in commercial operations.

(5) Any information obtained pursuant to this paragraph (b) that is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552(b)) shall not be disclosed by the Government.

(c) If, after receipt of offers, the contracting officer concludes there is insufficient information available to determine price reasonableness and none of the exceptions applies, then cost or pricing data shall be obtained.

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**15.804-6 Instructions for submission of cost or pricing data or information other than cost or pricing data.**

**~~15.804-6 Submission of data.~~**

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*FAR as of FAC 90-25*

(a)(1) The contracting officer shall specify—(i) whether ~~or not~~ cost or pricing data are required, (ii) whether ~~or not~~ certification will be required, and (iii) the form (see paragraph (b) of this subsection) in which the cost or pricing data shall be submitted. Even if the solicitation does not so specify, however, the contracting officer is not precluded from requesting such data if they are later found necessary.

—(2) When certified cost or pricing data are not required because an action is below the pertinent threshold set forth at 15.804-2(a)(1), the contracting officer may request partial or limited data to determine a reasonable price. The contracting officer shall request only that data which the contracting officer considers necessary to determine a reasonable price. For example, cost data might be necessary to support an analysis of material costs, but not for labor and overhead costs. When such partial or limited data are requested, the contracting officer should require, as a minimum, the submission of information on the prices and quantities at which the offeror has previously sold the same or similar products.

(b)(1) Cost or pricing data shall be submitted on Standard Form 1411 (SF 1411), Contract Pricing Proposal Cover Sheet, unless required to be submitted on one of the termination forms specified in Subpart 49.6. Data supporting forward pricing rate agreements or final indirect cost proposals shall be submitted in a format acceptable to the contracting officer.

—(2) Contract pricing proposals submitted on SF 1411 with supporting attachments shall be prepared to satisfy the instructions and appropriate format of Table 15-2. Direct Labor—Provide a time-phased (e.g., monthly, quarterly, etc.) breakdown of labor hours, rates, and cost by appropriate category, and furnish bases for estimates.

*FAR as revised*

(a) **Taking into consideration the hierarchy at 15.802**, the contracting officer shall specify in the solicitation (see 15.804-8(h) and (i))—

(1) Whether cost or pricing data are required;

(2) **That, in lieu of submitting cost or pricing data, the offeror may submit a request for exception from the requirement to submit cost or pricing data;**

(3) **Whether information other than cost or pricing data is required, if cost or pricing data are not necessary;**

(4) **The format** (see paragraph (b) of this subsection) in which the cost or pricing data or information other than cost or pricing data shall be submitted; and

(5) **Necessary preaward or postaward access to offeror's records if not provided by the use of a standard form or clause.**

(b)(1) Cost or pricing data shall be submitted on a SF 1411 unless required to be submitted on one of the termination forms specified in Subpart 49.6. **The SF 1411 shall not be used unless cost or pricing data are required to be submitted. Contract pricing proposals submitted on a SF 1411 with supporting attachments shall be prepared in accordance with Table 15-2 or as specified by the contracting officer.** Data supporting forward pricing rate agreements or final indirect cost proposals shall be submitted in a format acceptable to the contracting officer.

(2) **If information other than cost or pricing data is required to support price reasonableness or cost realism, the contracting officer may require such information to be submitted using a SF 1448. Requests for information should be tailored so that only necessary data are requested. The information is not considered cost or pricing data and shall not be**

certified in accordance with 15.804-4. Information submitted on a SF 1448 shall be prepared following the instructions provided in Table 15-3.

**TABLE 15-2 INSTRUCTIONS FOR SUBMISSION OF A CONTRACT PRICING PROPOSAL**

~~1.~~ The SF 1411 provides a ~~vehicle~~ for the offeror to submit to the Government a pricing proposal of estimated and/or incurred costs by contract line item with supporting information, adequately crossreferenced, suitable for detailed analysis

A cost element breakdown, using the applicable format prescribed in 8A, B, or C below, shall be attached for each proposed line item and must reflect any specific requirements of the contracting officer. Supporting breakdowns must be furnished for each cost element, consistent with the offeror's cost accounting system.

\* \* \* \* \*

*Established Catalog or Market Price/ Prices Set by Law or Regulation* —When an ~~exception~~ from the requirement to submit cost or pricing data is ~~claimed~~, whether the item was produced by others or by the offeror, provide justification for the ~~exception~~ as required by 15.804-3(e).

\* \* \* \* \*

4. There is a clear distinction between submitting cost or pricing data and merely making available books, records, and other documents without identification. The requirement for submission of cost or pricing data is met when all accurate cost or pricing data reasonably available to the offeror have been submitted, either actually or by specific identification, to the contracting officer or an authorized representative. As later information comes into the offeror's possession, it should be promptly submitted to the contracting officer. The requirement for submission of cost or pricing data continues up to the time of final agreement on price.

**TABLE 15-2 INSTRUCTIONS FOR SUBMISSION OF A CONTRACT PRICING PROPOSAL WHEN COST OR PRICING DATA ARE REQUIRED**

The SF 1411 provides a **cover sheet for use by** offerors to submit to the Government a pricing proposal of estimated and/or **actual costs only when cost or pricing data are required.**

**1. The pricing proposal shall be segregated by contract line item with sufficient detail to permit cost analysis. Attach** cost-element breakdowns, using the applicable formats prescribed in Item 8A, B, or C of this section, for each proposed line item. **These breakdowns must conform to the instructions in the solicitation and** any specific requirements established by the contracting officer. **Furnish** supporting breakdowns for each cost element, consistent with the offeror's cost accounting system.

\* \* \* \* \*

*Established Catalog or Market Prices or Prices Set by Law or Regulation or Commercial Item Not Covered By Another Exception*—When an **exception** from the requirement to submit cost or pricing data is **requested**, whether the item was produced by others or by the offeror, provide justification for the **exception** as required by 15.804-1(d).

\* \* \* \* \*

4. There is a clear distinction between submitting cost or pricing data and merely making available books, records, and other documents without identification. The requirement for submission of cost or pricing data is met when all accurate cost or pricing data reasonably available to the offeror have been submitted, either actually or by specific identification, to the contracting officer or an authorized representative. As later information comes into the offeror's possession, it should be promptly submitted to the contracting officer **in a manner that clearly shows how the information relates to the offeror's price proposal.** The requirement for submission of cost or pricing data continues up to the time of agreement on price, **or another date agreed upon between the parties**

if applicable.

\* \* \* \* \*

8. HEADINGS FOR SUBMISSION OF LINE-ITEM SUMMARIES:

A. New Contracts (including Letter contracts).

\* \* \* \* \*

B. Change Orders, Modifications, and Claims.

\* \* \* \* \*

Under Column (2)—Include ~~(i)~~ current estimates of what the cost would have been to complete deleted work not yet performed, and ~~(ii)~~ the cost of deleted work already performed.

\* \* \* \* \*

C. Price Revision/Redetermination.

\* \* \* \* \*

\* \* \* \* \*

8. HEADINGS FOR SUBMISSION OF LINE-ITEM SUMMARIES:

A. New Contracts (including Letter contracts).

\* \* \* \* \*

B. Change Orders, Modifications, and Claims.

\* \* \* \* \*

Under Column (2)—Include **the** current estimates of what the cost would have been to complete the deleted work not yet performed (**not the original proposal estimates**), and the cost of deleted work already performed.

\* \* \* \* \*

C. Price Revision/Redetermination.

\* \* \* \* \*

**TABLE 15-3 INSTRUCTIONS FOR SUBMISSION OF INFORMATION OTHER THAN COST OR PRICING DATA**

SF 1448 is a cover sheet for use by offerors to submit information to the Government when cost or pricing data are not required but the contracting officer has requested information to help establish price reasonableness or cost realism. Such information is not considered cost or pricing data, and shall not be certified in accordance with 15.804-4.

1. The information submitted shall be at the level of detail described in the solicitation or specified by the contracting officer. The offeror's own format is acceptable unless the contracting officer determines that use of a specific format is essential.

A. If adequate price competition is expected, the information may include cost or technical information necessary to determine the cost realism and adequacy of the offeror's proposal, e.g., information adequate to validate that the proposed costs are consistent with the technical proposal, or cost breakdowns to help identify unrealistically priced proposals.

B. If the offer is expected to be at or below the cost or pricing data threshold, and adequate price competition is not expected, the information may consist of data to permit the contracting officer and authorized representatives to determine price reasonableness, e.g., information to support an analysis of material costs (when sufficient information on labor and overhead rates is already available), or information on prices and quantities at which the offeror has previously sold the same or similar items.

2. Any information submitted must support the price proposed. Include sufficient detail or cross references to clearly establish the relationship of the information provided to the price proposed. Support any information provided by explanations or supporting rationale as needed to permit the contracting officer and authorized representatives to evaluate the documentation.

(c) Closing or cutoff dates should be included as part of the data submitted with the proposal. ~~If possible, the contracting officer and offeror should reach a prior understanding on criteria for establishing closing or cutoff dates (see 15.804-4(c)).~~

(c) Closing or cutoff dates should be included as part of the data submitted with the proposal (see 15.804-4(c)).

(d) The requirement for submission of cost or pricing data is met if all cost or pricing data reasonably available to the offeror are either submitted or identified in writing by the time of agreement on price. However, there is a clear distinction between submitting cost or pricing data and merely making available books, records, and other documents without identification. The latter does not constitute “submission” of cost or pricing data.

\* \* \* \* \*

(d) The requirement for submission of cost or pricing data is met if all cost or pricing data reasonably available to the offeror are either submitted or **specifically** identified in writing by the time of agreement on price **or another time agreed upon by the parties**. However, there is a clear distinction between submitting cost or pricing data and merely making available books, records, and other documents without identification. The latter does not constitute “submission” of cost or pricing data. [FAC 90-32]

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## 15.804-7 Defective cost or pricing data.

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### *FAR as of FAC 90-25*

\* \* \* \* \*

(b) \* \* \* \* \*

(7)(i) In addition to the price adjustment amount, the Government is also entitled to interest on any overpayments. ~~On DoD contracts only~~, the Government is also entitled to penalty amounts on certain of these overpayments. Overpayment occurs only when payment is made for supplies or services accepted by the Government. Overpayments would not result from amounts paid for contract financing as defined in 32.902.

(ii) In calculating the interest amount due, the contracting officer shall—

(A) \* \* \* \* \*

(B) Consider the date of each overpayment (The date of overpayment for this interest calculation shall be the date payment was made for the related completed and accepted contract items.); and

(C) \* \* \* \* \*

### *FAR as revised*

\* \* \* \* \*

(b) \* \* \* \* \*

(7)(i) In addition to the price adjustment amount, the Government is entitled to interest on any overpayments. The Government is also entitled to penalty amounts on certain of these overpayments. Overpayment occurs only when payment is made for supplies or services accepted by the Government. Overpayments would not result from amounts paid for contract financing as defined in 32.902.

(ii) In calculating the interest amount due, the contracting officer shall—

(A) \* \* \* \* \*

(B) Consider the date of each overpayment (the date of overpayment for this interest calculation shall be **(1)** the date payment was made for the related completed and accepted contract items, **or (2) for subcontract defective pricing, the date payment was made to the prime contractor, based on prime contract progress billings or deliveries, which included payments for a completed and accepted subcontract item**); and

(C) \* \* \* \* \*

(iii) In arriving at the amount due for penalties on Department of Defense contracts where the submission of defective cost or pricing data was a knowing submission, the contracting officer shall obtain an amount equal to the amount of overpayment made. Before taking any contractual actions concerning penalties, the contracting officer shall obtain the advice of counsel.

\* \* \* \* \*

(iii) In arriving at the amount due for penalties on contracts where the submission of defective cost or pricing data was a knowing submission, the contracting officer shall obtain an amount equal to the amount of overpayment made. Before taking any contractual actions concerning penalties, the contracting officer shall obtain the advice of counsel. [FAC 90-32]]

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**15.804-8 — Contract clauses.**

\* \* \* \* \*

**15.804-8 Contract clauses and solicitation provisions.**

\* \* \* \* \*

(h) *Requirements for cost or pricing data or information other than cost or pricing data.* Considering the hierarchy at 15.802, the contracting officer may insert the provision at 52.215-41, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data, in solicitations if it is reasonably certain that cost or pricing data or information other than cost or pricing data will be required. This provision also provides instructions to offerors on how to request an exception. Use the provision with Alternate I to specify a format for cost or pricing data other than the format required by Table 15-2 of 15.804-6(b). Use the provision with Alternate II when copies of the proposal are to be sent to the administrative contracting officer and contract auditor. Use the provision with Alternate III when submission via electronic media is required. Replace the basic provision with Alternate IV when a SF 1411 will not be required because an exception applies, but information other than cost or pricing data is required as described in 15.804-5. [FAC 90-32]

(i) *Requirements for cost or pricing data or information other than cost or pricing data—modifications.* Considering the hierarchy at 15.802, the contracting officer may insert the clause at 52.215-42, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications, in solicitations and contracts if it is reasonably certain that cost or pricing data or information other than cost or pricing data will be required for modifications. This clause also provides instructions to contractors on how to request an exception. Use the clause with Alternate I to specify a format for cost or pricing data other than the format required by Table 15-2 of 15.804-6(b). Use the clause with Alternate II if copies of the proposal are to be sent to the administrative contracting officer and contract auditor. Use the clause with Alternate III if submission via electronic media is required. Replace the basic clause with Alternate IV if a SF 1411 is not required because an exception may apply, but information other than cost or pricing data is required as described in 15.804-5. [FAC 90-32]

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**52.215-22 Price Reduction for Defective Cost or Pricing Data.**

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*FAR as of FAC 90-25*

As prescribed in 15.804-8(a), insert the following clause:

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*FAR as revised*

As prescribed in 15.804-8(a), insert the following clause:

PRICE REDUCTION FOR DEFECTIVE COST  
OR PRICING DATA (~~JAN 1994~~)

\* \* \* \* \*

(d) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—

\* \* \* \* \*

(2) ~~For Department of Defense contracts only~~; a penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.

(End of clause)

PRICE REDUCTION FOR DEFECTIVE COST  
OR PRICING DATA (**OCT 1995**)

\* \* \* \* \*

(d) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—

\* \* \* \* \*

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.

(End of clause)

[FAC 90-32]

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**52.215-23 Price Reduction for Defective Cost or Pricing Data—Modifications.**

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*FAR as of FAC 90-25*

As prescribed in 15.804-8(b), insert the following clause:

PRICE REDUCTION FOR DEFECTIVE COST  
OR PRICING DATA—MODIFICATIONS (~~NOV 1994~~)

(a) This clause shall become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), except that this clause does not apply to any modification for which the price is

- (1) ~~Based on adequate price competition;~~
- (2) ~~Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or~~
- (3) ~~Set by law or regulation.~~

\* \* \* \* \*

(e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—

\* \* \* \* \*

(2) ~~For Department of Defense contracts only~~; a penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submit-

*FAR as revised*

As prescribed in 15.804-8(b), insert the following clause:

PRICE REDUCTION FOR DEFECTIVE COST  
OR PRICING DATA—MODIFICATIONS (**OCT 1995**)

(a) This clause shall become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), except that this clause does not apply to any modification **if an exception under FAR 15.804-1 applies.**

\* \* \* \* \*

(e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—

\* \* \* \* \*

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data which were in-

ted cost or pricing data which were incomplete, inaccurate, or noncurrent.

(End of clause)

complete, inaccurate, or noncurrent.

(End of clause)

[FAC 90-32]

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## 52.215-24 Subcontractor Cost or Pricing Data.

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### *FAR as of FAC 90-25*

As prescribed in 15.804-8(c), insert the following clause:

#### SUBCONTRACTOR COST OR PRICING DATA (NOV 1994)

(a) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), ~~when entered into~~, or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the price is—

- (1) ~~Based on adequate price competition;~~
- (2) ~~Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or~~
- (3) ~~Set by law or regulation.~~

\* \* \* \* \*

(End of clause)

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### *FAR as revised*

As prescribed in 15.804-8(c), insert the following clause:

#### SUBCONTRACTOR COST OR PRICING DATA (OCT 1995)

(a) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), **on the date of agreement on price or the date of award, whichever is later;** or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless **an exception under FAR 15.804-1 applies.**

\* \* \* \* \*

(End of clause)

[FAC 90-32]

## 52.215-25 Subcontractor Cost or Pricing Data— Modifications.

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### *FAR as of FAC 90-25*

As prescribed in 15.804-8(d), insert the following clause:

#### SUBCONTRACTOR COST OR PRICING DATA—MODIFICATIONS (NOV 1994)

\* \* \* \* \*

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1) ~~when entered into~~, or pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), the Contractor shall require the sub-

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### *FAR as revised*

As prescribed in 15.804-8(d), insert the following clause:

#### SUBCONTRACTOR COST OR PRICING DATA—MODIFICATIONS (OCT 1995)

\* \* \* \* \*

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), **on the date of agreement on price or the date of award, whichever is later;** or **before** pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of



contractor to submit cost or pricing data (actually or by specific identification in writing), unless the price is—

- (1) Based on adequate price competition;
- (2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or
- (3) Set by law or regulation.

\* \* \* \* \*

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), when entered into.

(End of clause)

cost or pricing data at FAR 15.804-2(a)(1), the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless **an exception under FAR 15.804-1 applies.**

\* \* \* \* \*

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1) on the date of agreement on price or the date of award, whichever is later.

(End of clause)

[FAC 90-32]

#### **52.215-41 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data. [FAC 90-32]**

As prescribed in 15.804-8(h), insert the following provision:

##### **REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (OCT 1995)**

(a) *Exceptions from cost or pricing data.* (1) In lieu of submitting cost or pricing data, offerors may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

(i) Information relative to an exception granted for prior or repetitive acquisitions.

(ii) Catalog price information as follows:

(A) Attach a copy of or identify the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which this proposal is being made.

(B) Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, and reseller.

(C) Additionally, for each catalog item that exceeds   \*   (extended value not unit price), provide evidence of substantial sales to the general public. This may include sales order, contract, shipment, invoice, actual recorded sales or other records that are verifiable. In addition, if the basis of the price proposal is sales of essentially the same commercial item by affiliates, other manufacturers or vendors, those sales may be included. The offeror shall explain the basis of each offered price and its relationship to the established catalog price. When substantial general public sales have also been made at prices other than catalog or price list prices, the offeror shall indicate how the proposed price relates to the price of such recent sales in quantities similar to the proposed quantities.

(iii) *Market price information.* Include the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. The nature of the market should be described. The supply or service

being purchased should be the same as or similar to the market price supply or service. Data supporting substantial sales to the general public is also required.

(iv) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(v) For a commercial item exception, information on prices at which the same item or similar items have been sold in the commercial market.

(2) The offeror grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. Access does not extend to cost or profit information or other data relevant solely to the offeror's determination of the prices to be offered in the catalog or marketplace.

(b) *Requirements for cost or pricing data.* If the offeror is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The offeror shall submit cost or pricing data on Standard Form (SF) 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), with supporting attachments prepared in accordance with Table 15-2 of FAR 15.804-6(b)(2).

(2) As soon as practicable after agreement on price, but before contract award (except for unpriced actions such as letter contracts), the offeror shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.804-4.

(c) By submitting information to qualify for an exception, an offeror is not representing that this is the only exception that may apply.

(End of provision)

\* Insert dollar amount for sampling (see 15.804-1(c)(1))

*Alternate I* (OCT 1995). As prescribed in 15.804-8(h), substitute the following paragraph (b)(1) for paragraph (b)(1) of the basic provision:

(b)(1) The offeror shall submit cost or pricing data on Standard Form (SF) 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), with supporting attachments prepared in the following format:

*Alternate II* (OCT 1995). As prescribed in 15.804-8(h), add the following paragraph (d) to the basic provision:

(d) When the proposal is submitted, also submit one copy each, including the SF 1411 and supporting attachments, to: (1) the Administrative Contracting Officer, and (2) the Contract Auditor.

*Alternate III* (OCT 1995). As prescribed in 15.804-8(h), add the following paragraph (d) to the basic provision (if Alternate II is also used, redesignate as paragraph (e)):

(c) Submit the cost portion of the proposal via the following electronic media: *(Insert media format, e.g., electronic spreadsheet format, electronic mail, etc.).*

*Alternate IV* (OCT 1995). As prescribed in 15.804-8(h), replace the text of the basic provision with the following:

(a) Submission of cost or pricing data is not required.

(b) Provide information described below: *(Insert description of the information and the format that are required, including access to records necessary to permit an adequate evaluation of the proposed price in accordance with 15.804-6(a)(5). Standard Form 1448, Proposal Cover Sheet (Cost or Pricing Data Not Required), may be used for information other than cost or pricing data.)*

**52.215-42 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications.** [FAC 90-32]

As prescribed in 15.804-8(i), insert the following clause:

**REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA—MODIFICATIONS**  
(OCT 1995)

(a) *Exceptions from cost or pricing data.* (1) In lieu of submitting cost or pricing data for modifications under this contract, for price adjustments expected to exceed the threshold set forth at FAR 15.804-2(a)(1) on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable—

(i) Information relative to an exception granted for prior or repetitive acquisitions.

(ii) Catalog price information as follows:

(A) Attach a copy of or identify the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which this proposal is being made.

(B) Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, and reseller.

(C) Additionally, for each catalog item that exceeds \_\_\_\_\* (extended value not unit price), provide evidence of substantial sales to the general public. This may include sales order, contract, shipment, invoice, actual recorded sales or other records that are verifiable. In addition, if the basis of the price proposal is sales of essentially the same commercial item by affiliates, other manufacturers or vendors, those sales may be included. The offeror shall explain the basis of each offered price and its relationship to the established catalog price. When substantial general public sales have also been made at prices other than catalog or price list prices, the offeror shall indicate how the proposed price relates to the price of such recent sales in quantities similar to the proposed quantities.

(iii) *Market price information.* Include the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. The nature of the market should be described. The supply or service being purchased should be the same as or similar to the market price supply or service. Data supporting substantial sales to the general public is also required.

(iv) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(v) Information on modifications of contracts or subcontracts for commercial items.

(A) If (1) the original contract or subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition, catalog or market prices of commercial items, or prices set by law or regulation; and (2) The modification (to the contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the contract or subcontract from a contract or subcontract for the acqui-

sition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

(B) For a commercial item exception, the Contractor may provide information on prices at which the same item or similar items have been sold in the commercial market.

(2) The Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this clause, and the reasonableness of price. Access does not extend to cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.

(3) By submitting information to qualify for an exception, an offeror is not representing that this is the only exception that may apply.

(b) *Requirements for cost or pricing data.* If the Contractor is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The Contractor shall submit cost or pricing data on Standard Form (SF) 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), with supporting attachments prepared in accordance with Table 15-2 of FAR 15.804-6(b)(2).

(2) As soon as practicable after agreement on price, but before award (except for unpriced actions), the Contractor shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.804-4.

(End of clause)

\* Insert dollar amount for sampling (see 15.804-1(c)(1))

*Alternate I* (OCT 1995). As prescribed in 15.804-8(i), substitute the following paragraph (b)(1) for paragraph (b)(1) of the basic clause.

(b)(1) The Contractor shall submit cost or pricing data on Standard Form (SF) 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), with supporting attachments prepared in the following format:

*Alternate II* (OCT 1995). As prescribed in 15.804-8(i), add the following paragraph (c) to the basic clause:

(c) When the proposal is submitted, also submit one copy each, including the SF 1411 and supporting attachments, to: (1) the Administrative Contracting Officer, and (2) the Contract Auditor.

*Alternate III* (OCT 1995). As prescribed in 15.804-8(i), add the following paragraph (c) to the basic clause (if Alternate II is also used, redesignate as paragraph (d)):

(c) Submit the cost portion of the proposal via the following electronic media: *(Insert media format).*

*Alternate IV* (OCT 1995). As prescribed in 15.804-8(i), replace the text of the basic clause with the following:

(a) Submission of cost or pricing data is not required.

(b) Provide information described below: *(Insert description of the information and the format that are required, including access to records necessary to permit an adequate evaluation of the proposed price in accordance with 15.804-6(a)(5). Standard Form 1448, Proposal Cover Sheet (Cost or Pricing Data Not Required), may be used for information other than cost or pricing data.)*

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## 15.805-1 General.

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### *FAR as of FAC 90-25*

\* \* \* \* \*

[NOTE: from old 15.804-1]

(b) The Armed Services ~~Procurement Manual for Contract Pricing (ASPM No. 1)~~ was issued by the Department of Defense to guide pricing and negotiating personnel. It provides detailed discussions and examples applying pricing policies to pricing problems. ~~ASPM No. 1~~ is available for use for instruction and professional guidance. However, it is not directive, and its references to Department of Defense forms and regulations should be considered informational only. Copies of ASPM No. 1 (Stock No. 008-000-00221-5) may be purchased from the Superintendent of Documents, Attn: Mail List Section, U.S. Government Printing Office, Washington, DC 20402.

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### *FAR as revised*

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(d) The Armed Services **Pricing Manual (ASPM Volume I, "Contract Pricing," and Volume 2, "Price Analysis")** was issued by the Department of Defense to guide pricing and negotiating personnel. **The ASPM** provides detailed discussion and examples applying pricing policies to pricing problems. **The ASPM** is available for use for instruction and professional guidance. However, it is not directive and its references to Department of Defense forms and regulations should be considered informational only. Copies of ASPM **Vol. 1** (Stock No. 008-000-**00457-9**) and **Vol. 2** (Stock No. 008-000-**00467-6**) may be purchased from the Superintendent of Documents, U.S. Government Printing Office, **by telephone (202) 512-1800 or facsimile (202) 512-2250, or by mail order from the Superintendent of Documents, P. O. Box 371954, Pittsburgh, PA 15250-7954.** [FAC 90-32]

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## 15.805-2 Price analysis.

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### *FAR as of FAC 90-25*

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### *FAR as revised*

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(f) **Comparison of proposed prices with prices for the same or similar items obtained through market research.** [FAC 90-32]

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## 15.805-5 Field pricing support.

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### *FAR as of FAC 90-25*

(a)(1) When cost or pricing data are required, contracting officers shall request a field pricing report (which may include an audit review by the cognizant contract audit activity) before negotiating any contract or modification resulting from a proposal in excess of \$500,000, except as otherwise authorized under agency procedures, unless information available to the contracting officer is considered adequate to determine the reasonableness of the proposed cost

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### *FAR as revised*

(a)(1) When cost or pricing data are required, contracting officers shall request a field pricing report (which may include an audit review by the cognizant contract audit activity) before negotiating any contract or modification resulting from a proposal in excess of \$500,000, except as otherwise authorized under agency procedures, unless information available to the contracting officer is considered adequate to determine the reasonableness of the proposed cost

or price. Requests for field pricing support should be tailored to ask for minimum essential information needed to ensure a fair and reasonable price. Information of the type described in subdivisions (a)(1)(i) through (a)(1)(vi) of this subsection, which is often available to the contracting officer from the Administrative Contracting Officer or from the cognizant auditor, may be useful in determining the extent of any field pricing support that is needed—

\* \* \* \*

or price. **The contracting officer should contact the cognizant audit office to determine the existence of audits addressing proposed indirect costs. In accordance with 41 U.S.C. 254d and 10 U.S.C. 2313, the contracting officer shall not request a preaward audit of such indirect costs unless the information available from any existing audit completed within the preceding 12 months is considered inadequate for determining the reasonableness of the proposed indirect costs.** Requests for field pricing support should be tailored to ask for minimum essential information needed to ensure a fair and reasonable price. Information of the type described in subdivisions (a)(1)(i) through (a)(1)(vi) of this subsection, which is often available to the contracting officer from the Administrative Contracting Officer or from the cognizant auditor, may be useful in determining the extent of any field pricing support that is needed—

\* \* \* \* [FAC 90-31]

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## 15.806-1 General.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
(a)(1) * * * * *	(a)(1) * * * * *.
(2) Subcontractors must submit to the contractor or higher tier subcontractor, cost or pricing data or <del>claims</del> for exemption from the requirement to submit them. * * * * *	(2) Subcontractors must submit to the contractor or higher tier subcontractor, cost or pricing data or <b>requests</b> for exemption from the requirement to submit them. * * * * * [FAC 90-32]
(b) <del>Except when the subcontract prices are based on adequate price competition, on established catalog or market prices of commercial items sold in substantial quantities to the general public, or are set by law or regulation, any contractor required to submit certified cost or pricing data also shall obtain certified cost or pricing data before awarding any subcontract or purchase order expected to exceed the pertinent threshold set forth at 15.804-2(a)(1)(iii), or issuing any modification involving a price adjustment expected to exceed the pertinent threshold set forth at 15.804-2(a)(1)(iv) (see example of pricing adjustment at 15.804-2(a)(1)(ii)). To waive subcontractor cost or pricing data, follow the procedures at 15.804-3(i).</del>	(b) <b>Unless the subcontract qualifies for an exception under 15.804-1</b> , any contractor required to submit cost or pricing data also shall obtain cost or pricing data before awarding any subcontract or purchase order expected to exceed the <b>cost or pricing data</b> threshold, or issuing any modification involving a price adjustment expected to exceed the <b>cost or pricing data</b> threshold.
* * * * *	* * * * * [FAC 90-32]

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**15.806-2 Prospective subcontractor cost or pricing data.**

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*FAR as of FAC 90-25*

(a) The contracting officer shall require a contractor that is required to submit ~~certified~~ cost or pricing data also to submit to the Government (or cause the submission of) accurate, complete, and current cost or pricing data from prospective subcontractors in support of each subcontract cost estimate that is (1) \$1,000,000 or more, (2) both more than the ~~pertinent threshold set forth at 15.804-2(a)(1)(iii) and (iv)~~ and more than 10 percent of the prime contractor's proposed price, or (3) considered to be necessary for adequately pricing the prime contract. These subcontract cost or pricing data may be submitted using a Standard Form 1411 (SF ~~1411~~), Contract Pricing Proposal Cover Sheet.

\* \* \* \* \*

(c) If the prospective contractor satisfies the contracting officer that a subcontract will be priced on the basis of one of the ~~exemptions in 15.804-3~~, the contracting officer ~~normally~~ shall not require submission of ~~subcontractor~~ cost or pricing data to the Government in that case. If the subcontract estimate is based upon the cost or pricing data of the prospective subcontractor most likely to be awarded the subcontract, the contracting officer shall not require submission to the Government of data from more than one proposed subcontractor for that subcontract.

(d) Subcontractor cost or pricing data shall be accurate, complete, and current as of the date of ~~final~~ price agreement given on the contractor's Certificate of Current Cost or Pricing Data. The prospective contractor shall be responsible for updating a prospective subcontractor's data.

\* \* \* \* \*

*FAR as revised*

(a) The contracting officer shall require a contractor that is required to submit cost or pricing data also to submit to the Government (or cause submission of) accurate, complete, and current cost or pricing data from prospective subcontractors in support of each subcontract cost estimate that is (1) \$1,000,000 or more, (2) both more than the **cost or pricing data** threshold and more than 10 percent of the prime contractor's proposed price, or (3) considered to be necessary for adequately pricing the prime contract. These subcontract cost or pricing data may be submitted using a Standard Form (SF) 1411, Contract Pricing Proposal Cover Sheet **(Cost or Pricing Data Required)**. [FAC 90-32]

\* \* \* \* \*

(c) If the prospective contractor satisfies the contracting officer that a subcontract will be priced on the basis of one of the **exceptions**, the contracting officer shall not require submission of cost or pricing data to the Government in that case. If the subcontract estimate is based upon the cost or pricing data of the prospective subcontractor most likely to be awarded the subcontract, the contracting officer shall not require submission to the Government of data from more than one proposed subcontractor for that subcontract. [FAC 90-32]

(d) Subcontractor cost or pricing data shall be accurate, complete, and current as of the date of price agreement **or, if applicable, another date agreed upon between the parties**, given on the contractor's Certificate of Current Cost or Pricing Data. The prospective contractor shall be responsible for updating a prospective subcontractor's data. [FAC 90-32]

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**15.808 Price negotiation memorandum.**

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*FAR as of FAC 90-25*

(a) At the conclusion of each negotiation of an initial or revised price, the contracting officer shall promptly prepare a memorandum of the principal elements of the price negotiation. The memorandum

*FAR as revised*

(a) At the conclusion of each negotiation of an initial or revised price, the contracting officer shall promptly prepare a memorandum of the principal elements of the price negotiation. The memorandum

shall be included in the contract file and shall contain the following minimum information:

\* \* \* \* \*

(5) If ~~certified~~ cost or pricing data were required, the extent to which the contracting officer—

\* \* \* \* \*

(6) If cost or pricing data were not required in the case of any price negotiation exceeding the thresholds ~~set forth at 15.804-2(a)(1)~~, the ~~exemption or waiver~~ used and the basis for ~~claiming or granting~~ it.

~~(7) If certified cost or pricing data were required by the contracting officer under 15.804-2(a)(2), the rationale for such requirement.~~

~~(8) \* \* \* \* \*~~

~~(9) \* \* \* \* \*~~

~~(10) \* \* \* \* \*~~

(b) \* \* \* \* \*

shall be included in the contract file and shall contain the following minimum information:

\* \* \* \* \*

(5) If cost or pricing data were required, the extent to which the contracting officer—

\* \* \* \* \*

(6) If cost or pricing data were not required in the case of any price negotiation exceeding the **cost or pricing data** threshold, the **exception** used and the basis for it. [FAC 90-32]

~~(7) \* \* \* \* \*~~

~~(8) \* \* \* \* \*~~

~~(9) \* \* \* \* \*~~

(b) \* \* \* \* \* [FAC 90-32]

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## 15.812-1 General.

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### *FAR as of FAC 90-25*

(a) \* \* \* \* \*

(b) However, the policy in paragraph (a) of this subsection does not apply to any contract or subcontract item of supply for which the price is, or is based on, an established catalog or market price of a commercial item sold in substantial quantities to the general public. ~~A price is "based on" a catalog or market price only if the item is sufficiently similar to the catalog or market price commercial item to ensure that any difference in price can be identified and justified without resort to cost analysis.~~

(c) In addition, when contracting by negotiation without full and open competition, contracting officers shall require that offerors identify in their proposals those items of supply which they will not manufacture or to which they will not contribute significant value. The contracting officer shall require similar information when contracting by negotiation with full and open competition if adequate price competition is not expected ~~(see 15.804-3(b))~~. The information need not be requested in connection with the award of contracts under the General Services Administration's competitive Multiple Award Schedule Program. The information shall not be requested for commercial items sold in substantial quantities to the general public when the prices are, or are based on, established catalog or market prices. Such information shall be used to determine whether

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### *FAR as revised*

(a) \* \* \* \* \*

(b) However, the policy in paragraph (a) of this subsection does not apply to any contract or subcontract item of supply for which the price is, or is based on, an established catalog or market price of a commercial item sold in substantial quantities to the general public **under 15.804-1(b)(2) or a commercial item exception under 15.804-1(b)(4)**. [FAC 90-32]

(c) In addition, when contracting by negotiation without full and open competition, contracting officers shall require that offerors identify in their proposals those items of supply which they will not manufacture or to which they will not contribute significant value. The contracting officer shall require similar information when contracting by negotiation with full and open competition if adequate price competition is not expected (see 15.804-**1(b)(1)**). The information need not be requested in connection with the award of contracts under the General Services Administration's competitive Multiple Award Schedule Program. The information shall not be requested for commercial items sold in substantial quantities to the general public when the prices are, or are based on, established catalog or market prices. Such information shall be used to de-



the intrinsic value of an item has been distorted through application of overhead and whether such items should be considered for breakout. The contracting officer may require such information in any other negotiated contracts when appropriate.

termine whether the intrinsic value of an item has been distorted through application of overhead and whether such items should be considered for breakout. The contracting officer may require such information in any other negotiated contracts when appropriate. [FAC 90-32]

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## 15.905 Profit-analysis factors.

### 15.905-1 Common factors.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>*****</p> <p>(c) <i>Federal socioeconomic programs.</i> This factor measures the degree of support given by the prospective contractor to Federal socioeconomic programs, such as those involving small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, handicapped sheltered workshops, <del>labor surplus areas</del>, and energy conservation. Greater profit opportunity should be provided contractors who have displayed unusual initiative in these programs.</p> <p>*****</p>	<p>*****</p> <p>(c) <i>Federal socioeconomic programs.</i> This factor measures the degree of support given by the prospective contractor to Federal socioeconomic programs, such as those involving small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, <b>women-owned small businesses</b>, handicapped sheltered workshops, and energy conservation. Greater profit opportunity should be provided contractors who have displayed unusual initiative in these programs. [FAC 90-32]</p> <p>*****</p>

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## SUBPART 15.10—PREAWARD, AWARD, AND POSTAWARD NOTIFICATIONS, PROTESTS, AND MISTAKES

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
	<p><b>15.1001 General.</b> This subpart applies to the use of competitive proposals, as described in 6.102(b), and a combination of competitive procedures, as described in 6.102(c). To the extent practicable, however, the procedures and intent of this subpart, with reasonable modification, should be followed for acquisitions described in 6.102(d): broad agency announcements, small business innovation research contracts and architect-engineer contracts. However, they do not apply to multiple award schedules, as described in 6.102(d)(3). [FAC 90-31]</p>

## 15.1002 Notifications to unsuccessful offerors.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>(a) <i>General.</i> The contracting officer shall promptly notify each offeror whose proposal is determined to be unacceptable or whose offer is not selected for award, <del>unless disclosure might prejudice the Government's interest.</del></p>	<p>(a) <i>General.</i> <b>Within three days after the date of contract award</b>, the contracting officer shall notify, <b>in writing or electronically</b>, each offeror whose proposal is determined to be unacceptable or whose offer is not selected for award. <b>"Day", for purposes of the notification process, means calendar day, except that the period will run until a day which is not a Saturday, Sunday, or legal holiday.</b> [FAC 90-31]</p>
<p>(b) <i>Preaward notices.</i> (1) When the proposal evaluation period for a solicitation <del>estimated to exceed the small purchase limitation in Part 13</del> is expected to exceed 30 days, or when a limited number of offerors have been selected as being within the competitive range (see 15.609), the contracting officer, upon determining that a proposal is unacceptable, shall promptly notify the offeror. The notice shall at least state (i) in general terms the basis for the determination and (ii) that a revision of the proposal will not be considered. [FAC 90- 29]</p>	<p>(b) <i>Preaward notices.</i> (1) When the proposal evaluation period for a solicitation <b>not using simplified acquisition procedures</b> in part 13 is expected to exceed 30 days, or when a limited number of offerors have been selected as being within the competitive range (see 15.609), the contracting officer, upon determining that a proposal is unacceptable, shall promptly notify the offeror. The notice shall at least state (i) in general terms the basis for the determination and (ii) that a revision of the proposal will not be considered. [FAC 90-29]</p>
<p>(2) In a small business set-aside (see Subpart 19.5), upon completion of negotiations and determinations of responsibility, but prior to award, the contracting officer shall inform each unsuccessful offeror in writing of the name and location of the apparent successful offeror. The notice shall also state that (i) the Government will not consider subsequent revisions of the unsuccessful proposal and (ii) no response is required unless a basis exists to challenge the small business size status of the apparently successful offeror. The notice is not required when the contracting officer determines in writing that the urgency of the requirement necessitates award without delay.</p>	<p>(2) In a small business set-aside (see Subpart 19.5), upon completion of negotiations and determinations of responsibility, but prior to award, the contracting officer shall notify each unsuccessful offeror in writing <b>or electronically</b> of the name and location of the apparent successful offeror. The notice shall also state that (i) the Government will not consider subsequent revisions of the unsuccessful proposal and (ii) no response is required unless a basis exists to challenge the small business size status of the apparently successful offeror. The notice is not required when the contracting officer determines in writing that the urgency of the requirement necessitates award without delay. [FAC 90-31]</p>
<p>(c) <i>Postaward notices.</i> (1) <del>Promptly</del> after award of contracts resulting from solicitations <del>exceeding the small purchase limitation in Part 13</del>, the contracting officer shall notify unsuccessful offerors in writing, unless preaward notice was given under paragraph (b) of this section. The notice shall include—</p> <ul style="list-style-type: none"><li>(i) The number of offerors solicited;</li><li>(ii) The number of proposals received;</li><li>(iii) The name and address of each offeror receiving an award;</li><li>(iv) The items, quantities, and unit prices of each award (if the number of items or other factors</li></ul>	<p>(c) <i>Postaward notices.</i> (1) After award of contracts resulting from solicitations <b>not using simplified acquisition procedures</b>, the contracting officer shall notify unsuccessful offerors in writing <b>or electronically</b>, unless preaward notice was given under paragraph (b) of this section. The notice shall include—</p> <ul style="list-style-type: none"><li>(i) The number of offerors solicited</li><li>(ii) The number of proposals received;</li><li>(iii) The name and address of each offeror receiving an award;</li><li>(iv) The items, quantities, and unit prices of each award (if the number of items or other factors</li></ul>

makes listing unit prices impracticable, only the total contract price need be furnished); and

(v) In general terms, the reason the offeror's proposal was not accepted, unless the price information in (iv) above readily reveals the reason. In no event shall an offeror's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other offeror.

~~(2) For acquisitions subject to the Trade Agreements Act or the North American Free Trade Agreement (NAFTA) Implementation Act (see 25.405(e)), the information in paragraph (c)(1) of this section shall be provided to unsuccessful offerors from designated or NAFTA countries promptly, but in no event later than seven working days after contract award.~~

~~(3) Upon request, the contracting officer shall furnish the information described in 15.1004(c)(1) (i) through (v) to unsuccessful offerors in solicitations not exceeding the small purchase limitation in Part 13.~~

makes listing unit prices impracticable, only the total contract price need be furnished); and

(v) In general terms, the reason the offeror's proposal was not accepted, unless the price information in (iv) above readily reveals the reason. In no event shall an offeror's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other offeror.

(2) Upon request, the contracting officer shall furnish the information described in 15.1002(c)(1)(i) through (v) to unsuccessful offerors in solicitations **using simplified acquisition procedures** in Part 13.

[FAC 90-29 & 31]]

#### 15.1003 Notification to successful offerors.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
The contracting officer shall award a contract with reasonable promptness to the successful offeror (selected in accordance with 15.611(d)) by transmitting written of the award to that offeror (but see 15.608(b)). * * * * *	The contracting officer shall award a contract with reasonable promptness to the successful offeror (selected in accordance with 15.611(d)) by transmitting written <b>or electronic notice</b> of the award to that offeror (but see 15.608(b)). * * * * * [FAC 90-31]

#### 15.1004 Debriefing of unsuccessful offerors

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
(a) When a contract is awarded on the basis of other than price alone (see Subpart 15.6), unsuccessful offerors, upon their written request, shall be debriefed as soon as possible and furnished the basis for the selection decision and contract award.	(a) When a contract is awarded on the basis of <b>competitive proposals</b> , an offeror, upon its written request <b>received by the agency within three days after the date the unsuccessful offeror receives notice of contract award</b> , shall be debriefed and furnished the basis for the selection decision and contract award. <b>When practicable, debriefing requests received more than three days after the offeror receives notice of contract award shall be accommodated. However, accommodating such</b>

untimely debriefing requests does not extend the time within which suspension of performance can be required, as this accommodation is not a "required debriefing" as described in FAR Part 33. To the maximum extent practicable, the debriefing should occur within five days after receipt of the written request. "Day", for purposes of the debriefing process, means calendar day, except that the period will run until a day which is not a Saturday, Sunday, or legal holiday.

(b) Debriefings of successful and unsuccessful offerors may be done orally, in writing, by electronic means, or any other method acceptable to the contracting officer.

(c) The contracting officer should chair any debriefing session held. Individuals actually responsible for the evaluations shall provide support. If the contracting officer is unavailable, another agency representative may be designated by the contracting officer on a case-by-case basis, with the approval of an individual a level above the contracting officer.

(b) Debriefing information shall include the Government's evaluation of the significant weak or deficient factors in the proposal; ~~however, point-by-point comparisons with other offerors' proposals shall not be made. Debriefing shall not reveal the relative merits or technical standing of competitors or the evaluation scoring.~~ Moreover, debriefing shall not reveal any information that is not releasable under the Freedom of Information Act; for example—

- (1) Trade secrets;
- (2) Privileged or confidential manufacturing processes and techniques; and
- (3) Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information; and

(d) At a minimum, the debriefing information shall include—

- (1) The Government's evaluation of the significant **weaknesses or deficiencies** in the offeror's proposal, if applicable;
- (2) The overall evaluated cost or price and technical rating, if applicable, of the successful offeror and debriefed offeror;
- (3) The overall ranking of all offerors when any ranking was developed by the agency during the source selection;
- (4) A summary of the rationale for award;
- (5) For acquisitions of commercial end items, the make and model of the item to be delivered by the successful offeror; and
- (6) Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed.

(e) The debriefing shall not include point-by-point comparisons of the debriefed offeror's proposal with those of other offerors. Moreover, debriefing shall not reveal any information exempt from release under the Freedom of

Information Act **including**—

(1) Trade secrets;

(2) Privileged or confidential manufacturing processes and techniques;

(3) Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information; **and**

(4) **The names of individuals providing reference information about an offeror's past performance.** [FAC 90-26]

(c) The contracting officer shall include a summary of the debriefing in the contract file.

(f) The contracting officer shall include **an official** summary of the debriefing in the contract file.

(g) **If, within one year of contract award, a protest causes the agency to issue either a new solicitation or a new request for best and final offers on the protested contract award, the agency shall make available to all offerors—**

(1) **Information provided in any debriefings conducted on the original award about the successful offeror's proposal; and**

(2) **Other nonproprietary information that would have been provided to the original offerors.**

[FAC 90-31]

**52.215-16 Contract Award.** [FAC 90-31]

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*FAR as of FAC 90-25*

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*FAR as revised*

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CONTRACT AWARD (~~JUL 1990~~)

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CONTRACT AWARD (**OCT 1995**)

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(h) **The Government may disclose the following information in post-award debriefings to other offerors: (1) the overall evaluated cost and technical rating of the successful offeror; (2) the overall ranking of all offerors, when any ranking was developed by the agency during source selection; (3) a summary of the rationale for award; and (4) for acquisitions of commercial end items, the make and model or commercial item description of the item to be delivered by the successful offeror.**

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**52.215-26 Integrity of Unit Prices.** [FAC 90-32]

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*FAR as of FAC 90-25*

As prescribed in 15.812-2, insert the following clause:

INTEGRITY OF UNIT PRICES (~~APR 1994~~)

\* \* \* \* \*

(b) The requirement in paragraph (a) of this clause does not apply to any contract or subcontract item of supply for which the unit price is, or is based on, an established catalog or market price for a commercial item sold in substantial quantities to the general public. A price is based on a catalog or market price only if the item being purchased is sufficiently similar to the catalog or market price commercial item to ensure that any difference in price can be identified and justified without resort to cost analysis.

\* \* \* \* \*

*FAR as revised*

As prescribed in 15.812-2, insert the following clause:

INTEGRITY OF UNIT PRICES (**OCT 1995**),

\* \* \* \* \*

(b) The requirement in paragraph (a) of this clause does not apply to any contract or subcontract item of supply for which the unit price is, or is based on, an established catalog or market price for a commercial item sold in substantial quantities to the general public **or to an item qualifying for a commercial item exception to cost or pricing data.** A price is based on an established catalog or market price only if the item being purchased is sufficiently similar to the catalog or market **priced** commercial item to ensure that any difference in **prices** can be identified and justified without resort to cost analysis.

\* \* \* \* \*